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TO

MISSISSIPPI CODE

1972 ANNOTATED

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2013 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2013 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

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TITLE 75

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 15

Mississippi Money Transmitters Act

§ 75-15-1. Citation.

This chapter may be cited as the "Mississippi Money Transmitters Act."

SOURCES: Codes, 1942, § 5131-01; Laws, 1966, ch. 257, § 1; Laws, 2010, ch. 448, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Mississippi Money Transmitters Act" for "Sale of Checks Law."

§ 75-15-3. Definitions.

For the purposes of this chapter:

(a) "Check" means any check, draft, money order, personal money order or other instrument, including but not limited to stored value cards, for the transmission or payment of money. The format of a check may be either paper, electronic, plastic or any combination thereof.

(b) "Commissioner" means the Commissioner of Banking and Consumer Finance of the State of Mississippi.

(c) "Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

(d) "Executive officer" means the licensee's president, chairman of the executive committee, senior officer responsible for the licensee's business, chief financial officer and any other person who performs similar functions.

(e) "Licensee" means a person duly licensed by the commissioner under this chapter.

(f) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(g) "Money transmission" means to engage in the business of the sale or issuance of checks or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile or electronic transfer.

(h) "Outstanding check" means any check issued or sold in Mississippi by or for the licensee that has been reported as sold but not yet paid by or for the licensee.

(i) "Person" means any individual, partnership, association, joint-stock association, trust or corporation, but does not include the United States government or the government of this state.

(j) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller or by the purchaser or remitter or some other person.

(k) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(*l*) "Sell" means to sell, to issue or to deliver a check.

(m) "Stored value" means monetary value that is evidenced by an electronic record.

SOURCES: Codes, 1942, § 5131-02; Laws, 1966, ch. 257, § 2; Laws, 2000, ch. 621, § 8; Laws, 2003, ch. 340, § 1; Laws, 2010, ch. 448, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 75-15-5. License required.

No person, except those specified in Section 75-15-7, shall engage in the business of money transmission, as a service or for a fee or other consideration, without having first obtained a license under this chapter.

SOURCES: Codes, 1942, § 5131-03; Laws, 1966, ch. 257, § 3; Laws, 2010, ch. 448, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "money transmission" for "selling checks" and "under this chapter" for "hereunder."

§ 75-15-7. Exemption from license requirement.

Nothing in this chapter shall apply to the sale or issuance or delivering of checks by:

(a) Any financial institution whose deposits are insured by any agency of the United States government or any trust company authorized to do business in this state;

(b) The government of the United States or any department or agent thereof;

(c) The State of Mississippi or any municipal corporation, county or other political subdivision of this state;

(d) Agents of a licensee, as provided for in Section 75-15-17, provided that this exemption shall apply only to the agent's acts on behalf of the

licensee and this exemption shall not exempt the agent from the provisions of this chapter where he conducts money transmissions for his own account;

(e) Attorneys-at-law, as to checks issued in the regular course of the practice of law;

(f) Persons not carrying on the trade or business of money transmission, this exemption is intended to include persons who conduct money transmissions only as an incidental act to another trade or business regularly carried on by them and persons who only occasionally and infrequently conduct money transmissions for another person; or

(g) The Nationwide Mortgage Licensing System and Registry for mortgage brokers, mortgage lenders and mortgage loan originators.

SOURCES: Codes, 1942, § 5131-04; Laws, 1966, ch. 257, § 4; Laws, 2003, ch. 340, § 2; Laws, 2010, ch. 448, § 4, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote (a) and (f); added (g); substituted "conducts money transmissions" for "issues his own checks" in (d); and made a minor stylistic change.

§ 75-15-9. Applications and qualifications.

Each application for a license to engage in the business of money transmission shall be made in writing and under oath to the commissioner in such form as he may prescribe. The application shall state the full name and business address of:

(a) The proprietor, if the applicant is an individual;

(b) Every member, if the applicant is a partnership or association;

(c) The corporation and each executive officer and director thereof, if the applicant is a corporation;

(d) Every trustee and officer if the applicant is a trust;

(e) The applicant shall have a net worth of at least Twenty-five Thousand Dollars ($25,000.00) plus Fifteen Thousand Dollars ($15,000.00) for each location in excess of one (1) at which the applicant proposes to conduct money transmissions in this state, computed according to generally accepted accounting principles, but in no event shall the net worth be required to be in excess of Two Hundred Fifty Thousand Dollars ($250,000.00);

(f) The financial responsibility, financial condition, business experience and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently;

(g) Each application for a license shall be accompanied by an investigation fee of Fifty Dollars ($50.00) and license fee in the amount required by Section 75-15-15. All fees collected by the commissioner under the provisions of this chapter shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance;

(h) An applicant shall not have been convicted of a felony in any jurisdiction or a misdemeanor of fraud, theft, forgery, bribery, embezzlement, or making a fraudulent or false statement in any jurisdiction.

SOURCES: Codes, 1942, § 5131-05; Laws, 1966, ch. 257, § 5; Laws, 1995, ch. 373, § 1; Laws, 2010, ch. 448, § 5, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 75-15-11. Accompanying financial statement, bond, proof of registration as money service business, and set of fingerprints; denial of license to certain individuals convicted of certain crimes.

Each application for a license shall be accompanied by:

(a) Certified financial statements, reasonably satisfactory to the commissioner, showing that the applicant has a net worth of at least Twenty-five Thousand Dollars ($25,000.00) plus Fifteen Thousand Dollars ($15,000.00) for each location in excess of one (1) at which the applicant proposes to conduct money transmissions in this state, computed according to generally accepted accounting principles, but in no event shall the net worth be required to be in excess of Two Hundred Fifty Thousand Dollars ($250,000.00).

(b) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of Twenty-five Thousand Dollars ($25,000.00) or in an amount equal to outstanding money transmissions in Mississippi, whichever is greater, but in no event shall the bond be required to be in excess of Five Hundred Thousand Dollars ($500,000.00). However, the commissioner may increase the required amount of the bond upon the basis of the impaired financial condition of a licensee as evidenced by a reduction in net worth, financial losses or other relevant criteria. The bond shall be in form satisfactory to the commissioner and shall run to the state for the use and benefit of the Department of Banking and Consumer Finance and any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with money transmissions in Mississippi. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving sixty (60) days' notice in writing to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. Any claimants against the applicant or his agents may themselves bring suit directly on the bond, or the Attorney General may bring suit thereon in behalf of those claimants, either in one (1) action or successive actions.

(c) In lieu of the corporate surety bond, the applicant may deposit with the State Treasurer bonds or other obligations of the United States or

guaranteed by the United States or bonds or other obligations of this state or of any municipal corporation, county, or other political subdivision or agency of this state, or certificates of deposit of national or state banks doing business in Mississippi, having an aggregate market value at least equal to that of the corporate surety bond otherwise required. Those bonds or obligations or certificates of deposit shall be deposited with the State Treasurer to secure the same obligations as would a corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right to substitute other bonds or obligations or certificates of deposit for those deposited, with the approval of the commissioner, and shall be required so to do on order of the commissioner made for good cause shown. The State Treasurer shall provide for custody of the bonds or obligations or certificates of deposits by a qualified trust company or bank located in the State of Mississippi or by any Federal Reserve Bank. The compensation, if any, of the custodian for acting as such under this section shall be paid by the depositing licensee.

(d) Proof of registration as a money service business per 31 CFR Section 103.41, if applicable.

(e) A set of fingerprints from any local law enforcement agency for each owner of a sole proprietorship, partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company, shareholders owning ten percent (10%) or more of the outstanding shares of the corporation, except publically traded corporations and their subsidiaries, and any other executive officer with significant oversight duties of the business. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety for a state criminal history records check, and the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history records check. The department shall not issue a license if it finds that the applicant, or any person who is an owner, partner, director or executive officer of the applicant, has been convicted of: (i) a felony in any jurisdiction; or (ii) a crime that, if committed within the state, would constitute a felony under the laws of this state; or (iii) a misdemeanor of fraud, theft, forgery, bribery, embezzlement or making a fraudulent or false statement in any jurisdiction. For the purposes of this chapter, a person shall be deemed to have been convicted of a crime if the person has pleaded guilty to a crime before a court or federal magistrate, or plea of nolo contendere, or has been found guilty of a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension of a sentence, unless the person convicted of the crime has received a pardon from the President of the United States or the Governor or other pardoning authority in the jurisdiction where the conviction was obtained.

SOURCES: Codes, 1942, § 5131-06; Laws, 1966, ch. 257, § 6; Laws, 1995, ch. 373, § 2; Laws, 2010, ch. 448, § 6, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "conduct money transmissions" for "sell checks" preceding "in this state" in (a); rewrote (b); added (d) and (e); and made minor stylistic changes.

§ 75-15-12. Licensees required to possess permissible investments having an aggregate market value of at least the aggregate amount of outstanding checks.

(1) In addition to the bond required in Section 75-15-11, a licensee must possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding checks issued or sold or money received for transmission by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding checks does not exceed the bond or other security devices posted by the licensee in accordance with Section 75-15-11.

(2) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding checks and money received for transmission and may not be considered an asset or property of the licensee in the event of bankruptcy, receivership or a claim against the licensee unrelated to any of the licensee's obligations under this chapter.

(3) Permissible investments mean:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by federally insured financial depository institutions;

(d) Any investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of those securities or a fund composed of one or more permissible investments as set forth in this section;

(g) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(h) Receivables that are due to a licensee from its agents, which are not past due or doubtful of collection; or

(i) Any other investments approved by the commissioner.

(4) The commissioner may limit or disallow for purposes of determining compliance with this section an investment, surety bond, letter of credit or

other security otherwise permitted by this section if the commissioner determines it to be unsatisfactory for investment purposes or to pose a significant supervisory concern.

SOURCES: Laws, 2010, ch. 448, § 16, eff from and after July 1, 2010.

§ 75-15-13. Investigation; granting of license.

Upon the filing of the application, the payment of the investigation fee and license fee, and the approval by the commissioner of the bond or securities delivered under Section 75-15-11, the commissioner shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant, and, if he deems it advisable, of its officers and directors, and if he finds that the applicant (and its officers and directors, if investigated) has the requisite qualifications to meet the requirements of this chapter and that its (or their) qualifications are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community, he shall issue to the applicant a license to engage in the business of money transmission subject to the provisions of this chapter.

SOURCES: Codes, 1942, § 5131-07; Laws, 1966, ch. 257, § 7; Laws, 2010, ch. 448, § 7, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "commissioner" for "comptroller" twice and "money transmission" for "selling and issuing and delivering checks" near the end; and made minor stylistic changes.

§ 75-15-15. Annual license fee.

Each licensee shall pay to the commissioner with his initial application a license fee of Seven Hundred Fifty Dollars ($750.00), and annually thereafter on or before April 1 of each year, a renewal fee of Four Hundred Dollars ($400.00), plus Fifty Dollars ($50.00) for each location in excess of one (1) in Mississippi through which the licensee plans to conduct money transmissions during the license year for which the fee is paid, provided that in no event shall the annual renewal fee exceed One Thousand Dollars ($1,000.00).

SOURCES: Codes, 1942, § 5131-08; Laws, 1966, ch. 257, § 8; Laws, 2000, ch. 621, § 9; Laws, 2010, ch. 448, § 8, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "conduct money transmissions" for "sell" preceding "during the license year for which the fee is paid."

§ 75-15-17. Agents; appointment of subagents to conduct money transmission prohibited.

A licensee may conduct his business at one or more locations within this state and through or by means of such agents as the licensee may from time to

time designate or appoint. No license under this chapter shall be required of any agent of a licensee, provided that this exemption shall apply only to the agent's acts on behalf of the licensee and this exemption shall not exempt the agent from the provisions of this chapter where he conducts money transmissions for his own account. The licensee shall require each of his appointed agents to display prominently on the agent's premises, where same may be readily viewed by prospective clients or purchasers, a printed certificate signed by an authorized official of licensee setting forth in bold letters the names of the licensee and agent and stating that the licensee holds a valid and existing license issued by the commissioner under this chapter and that agent is a duly authorized agent of licensee. Neither a licensee nor an agent may appoint a subagent to conduct money transmissions.

SOURCES: Codes, 1942, § 5131-09; Laws, 1966, ch. 257, § 9; Laws, 2010, ch. 448, § 9, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "conducts money transmissions" for "issues his own checks" at the end of the second sentence, substituted "clients or purchasers" for "check purchasers," and "commissioner" for "comptroller" in the next-to-last sentence; added last sentence and made minor stylistic changes.

§ 75-15-19. Monthly report of total amount of outstanding money transmissions; annual financial statement; examination or audit of books and records; certain books and records to be maintained for five years.

(1)(a) Each licensee shall file with the commissioner within fifteen (15) days of the last business day of each month a report of the total amount of outstanding money transmissions in Mississippi. The principal sum of the surety bond or deposit required in Section 75-15-11 shall be adjusted, if appropriate, to reflect any changes in outstanding money transmissions. Licensees who maintain a surety bond in the principal sum of at least Five Hundred Thousand Dollars ($500,000.00) or a securities deposit having an aggregate market value of at least equal to Five Hundred Thousand Dollars ($500,000.00) shall be required to report the total amount of outstanding money transmissions in Mississippi on a quarterly basis.

(b) Each licensee shall file an annual financial statement with the commissioner, audited by an independent certified public accountant or an independent registered accountant, within five (5) months after the close of the licensee's fiscal year. The financial statement shall include a balance sheet, a profit and loss statement, and a statement of retained earnings of the licensee and the licensee's agents resulting from the business of money transmission.

(2) The commissioner may conduct or cause to be conducted an annual examination or audit of the books and records of any licensee at any time or times he deems proper, the cost of the examination or audit to be borne by the licensee. The refusal of access to the books and records shall be cause for the revocation of its license. The commissioner may charge the licensee an

examination fee in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for each licensed office, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi.

(3) Each licensee shall maintain the following books and records for a period of five (5) years and the books and records shall be available to the commissioner for inspection:

(a) A record of each money transmission sold;

(b) A general ledger, posted at least monthly, containing all assets, liabilities, capital, income and expense accounts;

(c) Bank statements and bank reconciliation records;

(d) Records of outstanding money transmissions;

(e) Records of each money transmission paid within the five-year period;

(f) A list of the names and addresses of all authorized agents; and

(g) Any other records the commissioner may reasonably require by rule or regulation.

The records required under this section may be maintained in photographic, electronic or other similar form.

(4) Each licensee must maintain a written Bank Secrecy Act/Anti-Money Laundering Program that complies with 31 CFR Section 103.125, if applicable.

(5) The commissioner may conduct a joint examination with representatives of other departments or agencies of another state or with the federal government. The commissioner may accept an examination report of another state or of the federal government or a report prepared by a certified public accountant instead of conducting an examination. A joint examination or an acceptance of an examination report does not preclude the commissioner from conducting his own examination. The report of a joint examination or an examination report accepted by the commissioner under this section is an official report of the commissioner for all purposes.

(6) The department may adopt the necessary administrative regulations, not inconsistent with state law, for the enforcement of this chapter.

SOURCES: Codes, 1942, § 5131-10; Laws, 1966, ch. 257, § 10; Laws, 1995, ch. 373, § 3; Laws, 2000, ch. 621, § 10; Laws, 2003, ch. 340, § 3; Laws, 2007, ch. 397, § 1; Laws, 2010, ch. 448, § 10, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-15-23. Liability of licensee.

Each licensee shall be liable for the payment of all money transmissions and for all checks that the licensee sells, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state, and shall be responsible only for those acts of the agent done on behalf of the licensee. Every check sold by a licensee directly or through an agent shall bear the name of the licensee clearly imprinted thereon. During the period of time that a person is an appointed agent for a licensee, the agent shall not directly or indirectly conduct his own money transmission business and the agent shall not be, continue to be, or become an officer, director, stockholder, employee, or agent of any other licensee under this chapter. When a person ceases to be an agent of a licensee, he shall immediately cease displaying his agent's appointment certificate, as provided under Section 75-15-17 of this chapter and shall immediately surrender same to the licensee.

SOURCES: Codes, 1942, § 5131-12; Laws, 1966, ch. 257, § 12; Laws, 2010, ch. 448, § 11, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "money transmissions and for all checks that the licensee sells" for "checks which licensee sells" in the first sentence; substituted "that" for "which" and "conduct his own money transmission business" for "sell his own checks and the agent may not become licensed under this chapter to sell his own checks" in the third sentence.

§ 75-15-25. Limitation on outstanding money transmissions or checks in Mississippi.

Whenever the bond or securities deposit required under Section 75-15-11 is less than Five Hundred Thousand Dollars ($500,000.00), the licensee may not at any time have a total amount in outstanding money transmissions or checks in Mississippi, in excess of the bond or securities deposit required of him under Section 75-15-11, and the licensee shall, in accordance with rules and regulations promulgated by the commissioner under this chapter, submit a written report to the commissioner on the last business day of each month regarding his money transmissions outstanding in Mississippi, whether issued by himself or through agents, provided that this limitation shall be the principal sum of the bond or the market value of the securities deposit required of the licensee under Section 75-15-11, and the sum of this limitation shall not be increased by any bond or securities deposit increase required by the commissioner under Section 75-15-29 or by deposit of any revocation order, suspension bond or securities deposit under Section 75-15-27.

SOURCES: Codes, 1942, § 5131-13; Laws, 1966, ch. 257, § 13; Laws, 2006, ch. 354, § 2; Laws, 2010, ch. 448, § 12, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 75-15-27. Revocation of license; notice; hearing; appeals.

Except where a license is automatically revoked without any act of the commissioner as specially provided in this chapter, no license shall be denied or revoked except on ten (10) days' notice (the first day of the ten-day period to be the date stated on the notice, which shall be the day it is mailed) to the applicant or licensee by the commissioner, sent by letter by United States registered mail, return receipt requested, to the applicant's or licensee's business address set forth in the application. Upon receipt of the notice, as stated in the registered mail receipt, the applicant or licensee may, within five (5) days thereafter (which five-day period may be wholly or partially outside of the ten-day period) make written demand for a hearing by the commissioner, which demand, in the case of a revocation notice, must be accompanied by an additional surety bond or securities deposit, as hereafter provided, the principal sum or the market value thereof to be specified by the commissioner in the revocation notice. The revocation notice shall not become final during the period of time in which the licensee may demand such hearing nor if licensee demands a hearing, until the matter has been finally determined by the commissioner or by the courts, provided as to any revocation order, but not a denial order, that the licensee posts together with his written demand for hearing an additional corporate surety bond, written by the same surety that wrote the bond under subsection (b) of Section 75-15-11, or an additional securities deposit in addition to the securities deposit theretofore made by the licensee under subsection (c) of Section 75-15-11 which additional surety bond or securities deposit shall be in a principal amount or of a market value deemed adequate by the commissioner as specified in the revocation order but not exceeding Two Hundred Fifty Thousand Dollars ($250,000.00), provided that if the licensee originally deposited with his application under Section 75-15-11 a corporate surety bond, the additional deposit provided in this section must be another corporate surety bond or an increase of the first one and may not be a deposit of securities, or if the licensee originally deposited securities, the additional deposit shall also be of securities and not a corporate surety bond. The bond or securities deposit shall secure the same obligations as does the corporate surety bond or securities deposit required by Section 75-15-11, but shall be in addition to the bond or securities deposit required thereby. Upon receipt of the written demand, the commissioner shall thereafter, with reasonable promptness, hear and determine the matter as provided by law. If the applicant or licensee deems himself aggrieved by the determination or order of the commissioner, he may within fifteen (15) days after the determination or order, have the determination or order reviewed by an appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing a petition setting out the specific order or action or part thereof by which the person deems himself aggrieved. All those petitions shall be given preferred settings and shall be heard by the court as speedily as possible. Such an appeal shall be perfected upon the posting of a bond for the costs of the appeal accompanied by the petition. Any party to the appeal may appeal to the

Supreme Court of Mississippi from the decree or order of the chancery court, within thirty (30) days from the rendition of the decree or order, in the manner provided by law for appeals to the Supreme Court of Mississippi from chancery courts.

Final denial or revocation of the license, whether automatic or by final determination of the commissioner or the courts, shall cancel as of the date of final revocation all bonds or securities deposits theretofore deposited by the applicant or licensee under any provision of this chapter, provided that the licensee (and his corporate surety, if any) shall not be relieved of any accrued liabilities, and provided further, where the licensee deposited securities, that there shall not be returned to the licensee any of the deposited securities until the commissioner determines that all accrued liabilities (including, but not limited to, the principal sums thereof, accrued interest thereon, and court costs, if any, assessed to the licensee) of the licensee under this chapter have been satisfied in full.

The commissioner may at any time revoke a license, on any ground on which he might refuse to grant a license, for failure to pay an annual fee or for violation of any provision of this chapter, subject to the provisions of this chapter.

A license shall be automatically and finally revoked without any act or further act of the commissioner and without any right of the licensee to any hearing or further hearing by the commissioner or the courts and without any right of the licensee or the commissioner to reinstate or have reinstated the license, in the following instances: (a) at expiration of the sixty-day notice period, if the corporate surety gives notice of cancellation of its bond or any of them; (b) upon failure by licensee to pay when due the annual license fee required by Section 75-15-15; (c) upon failure by licensee to file when due any information required by Section 75-15-19; (d) in case of a revocation notice under the first paragraph of this section, failure by the licensee to demand hearing as provided therein or failure to deposit any additional corporate surety bond or securities deposit as required by the commissioner; (e) upon a license revocation order becoming final at any stage; (f) failure by licensee to deposit when due any additional corporate surety bond or securities deposit required by the commissioner under Section 75-15-29; or (g) upon final conviction of licensee as to any offense covered by Section 75-15-31.

If a revocation order becomes final for any reason or in any manner, the license may not be reinstated, except upon new application as if the licensee had never been licensed before. The commissioner may deny the new application on grounds that a previous application was denied or a previous license to applicant was revoked or any ground or grounds on which he may deny an original application.

SOURCES: Codes, 1942, § 5131-14; Laws, 1966, ch. 257, § 14; Laws, 1995, ch. 373, § 5; Laws, 2010, ch. 448, § 13, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment made minor stylistic changes throughout the section.

§ 75-15-29. Bond increase.

Any provision in this chapter to the contrary notwithstanding, the commissioner may at any time, if in his sole opinion the protection of the public so requires, increase the principal sum of the bond or the aggregate market value of the deposit required of any applicant or licensee by Section 75-15-11 but in no case shall the principal sum of the bond or the aggregate market value of the deposit required by Section 75-15-11 exceed Five Hundred Thousand Dollars ($500,000.00) and provided further, that in any situation, where a revocation order has been issued and the licensee involved has posted the additional bond required under Section 75-15-27, for suspension thereof, pending final determination, the commissioner may for the same reasons require the principal sum of the additional, suspension bond to be increased but in no case shall the principal sum thereof exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and provided further that if the licensee originally deposited with his application under Section 75-15-11 a corporate surety bond, the additional increase provided in this section must be by another corporate surety bond or an increase of the first one, written by the same corporate surety that wrote the first one and may not be a deposit of securities or if the licensee originally deposited securities, the additional increase shall also be of securities and not a corporate surety bond.

SOURCES: Codes, 1942, § 5131-15; Laws, 1966, ch. 257, § 15; Laws, 1995, ch. 373, § 6; Laws, 2010, ch. 448, § 14, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Five Hundred Thousand Dollars ($500,000.00)" for "Two Hundred Fifty Thousand Dollars ($250,000.00)" preceding "and provided further, that in any situation" and made minor stylistic changes throughout the section.

§ 75-15-31. Penalties.

(1) If any person to whom or which this chapter applies or any agent or representative of that person violates any of the provisions of this chapter or attempts to transact the business of conducting money transmissions as a service or for a fee or other consideration, without having first obtained a license from the commissioner under the provisions of this chapter, that person and each such agent or representative shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and may also be confined to the county jail for not more than twelve (12) months. Each violation shall constitute a separate offense.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before beginning business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each

day that the person has engaged in the business without a license or after the expiration of a license.

(3) The commissioner may, after notice and hearing, impose a civil penalty against any licensee if the licensee or employee is adjudged by the commissioner to be in violation of the provisions of this chapter. The civil penalty shall not exceed Five Hundred Dollars ($500.00) per violation and shall be deposited into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

SOURCES: Codes, 1942, § 5131-16; Laws, 1966, ch. 257, § 16; Laws, 2000, ch. 621, § 11; Laws, 2004, ch. 450, § 4; Laws, 2010, ch. 448, § 15, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment in (1), twice substituted "agent or representative" for "agent, subagent, or representative," substituted "conducting money transmissions" for "selling or issuing or delivering checks," and deleted "or sentenced to hard labor for the county" following "county jail"; and in (2), substituted "beginning" for "commencing."

§ 75-15-35. Compliance with state and federal money laundering laws.

Each licensee shall comply with state and federal money laundering laws, including, but not limited to, the federal "Bank Secrecy Act," 12 USC Section 1951 et seq.

SOURCES: Laws, 2010, ch. 448, § 17, eff from and after July 1, 2010.

CHAPTER 17

Interest, Finance Charges, and Other Charges

GENERAL PROVISIONS

§ 75-17-1. Legal rates of interest and finance charges.

JUDICIAL DECISIONS

II. Usury.

9. In general.

II. Usury.

9. In general.

Chancellor did not err in finding that a finance charge was usurious under Miss. Code Ann. § 75-17-1(4) (2009) as the parties contracted for, in writing, a nineteen percent interest rate where the original principal balance to be repaid exceeded $ 2000; thus, pursuant to § 75-17-1(5), the finance charge was lawful. Miller v. Parker McCurley Props., L.L.C., 36 So. 3d 1234 (Miss. 2010).

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 75-17-7. Interest on judgments and decrees.

JUDICIAL DECISIONS

1. In general.
2. Interest allowable from date of verdict or judgment.
6. Insurance cases.

1. In general.

In an action by a member of two limited liability companies against the companies and three individual members, the chancellor erred in granting post-judgment interest at the "statutory rate" because there was no specific statutory rate for post-judgment interest. Bluewater Logistics, LLC v. Williford, 55 So. 3d 148 (Miss. 2011).

Employee was entitled to post-judgment interest where the Mississippi Employee Appeals Board (EAB) was authorized to impose interest on the back pay award against the Mississippi Department of Human Services; on remand, the EAB had to determine the post-judgment interest rate to which the employee was entitled. Miss. Dep't of Human Servs. v. McNeel, 10 So. 3d 444 (Miss. 2009).

2. Interest allowable from date of verdict or judgment.

Postjudgment pre-petition interest, under Miss. Code Ann. § 75-17-7, was disallowed a judgment creditor, but he was entitled to maintenance in the amount of $ 6,240 in addition to the $200,000 judgment principal amount, and $15,000 for medical bills, on a fraudulent transfer judgment on liquidation under 11 U.S.C.S. § 726(a). In re Gulfport Pilots Ass'n, 434 B.R. 380 (Bankr. S.D. Miss. 2010).

6. Insurance cases.

In a dispute between insurers arising from a collision, the secondary insurer (of a county) was entitled to reimbursement from the primary insurer (of a volunteer firefighter) for reasonable and necessary costs of defending the county; however, the trial court did not abuse its discretion in denying prejudgment interest. Indem. Ins. Co. of N. Am. v. Guidant Mut. Ins. Co., 99 So. 3d 142 (Miss. Oct. 4, 2012).

§ 75-17-21. Maximum finance charges by licensees under Small Loan Regulatory Law and Small Loan Privilege Tax Law; closing fees.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-23. Maximum finance charges in connection with sales of factory manufactured moveable homes.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-25. Meaning of "finance charge"; exclusion of prepayment penalties and default charges; effect of excessive finance charge.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "Sections 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or 75-17-33" to "Section 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, or 75-17-33" and "all interest and finance charge shall be forfeited" to "all interest and finance charges shall be forfeited" in the second paragraph. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

Editor's Note — The casenotes for Rea v. Breakers Association, 674 So.2d 496, Miss. 1996, have been set out below to correct an error in the case name appearing in the main volume.

JUDICIAL DECISIONS

1. In general.

Statute setting forth maximum charges for late payments applies to payments of carrying charges to condominium association when unit owner is personally liable for payment and when such payments are secured by forecloseable lien on owner's dwelling unit. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

Condominium association's imposition of 20% per month late charge on delinquent monthly carrying charges, with unpaid late charges added to principal amount due, violated usury statute imposing 4% maximum on late payment charges; as association had forecloseable lien against unit for unpaid late charges there was mortgagor-mortgagee relationship between unit owner and association, to which statute applied. Rea v. Breakers Association, 674 So. 2d 496 (Miss. 1996).

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-27. Late payment charges.

Editor's Note — The casenotes for Rea v. Breakers Ass'n, 674 So. 2d 496, Miss. 1996, have been set out below to correct an error in the case name appearing in the main volume.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-29. Prohibition against use of multiple agreements to obtain excessive finance charge.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-31. Limitations on prepayment penalties with respect to loans for certain real estate.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-33. Announcement of discount rates and indices by Commissioner of Banking and Consumer Finance; recording of maximum finance charge rates.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-35. Computation of interest on refunds of excess rates by public utilities.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

MAXIMUM INTEREST RATES ON PUBLIC BORROWING

SEC.
75-17-105. Maximum interest rate on tax anticipation notes.

§ 75-17-105. Maximum interest rate on tax anticipation notes.

Unless otherwise provided by law, tax anticipation notes and reappraisal notes issued by the State of Mississippi or a county, municipality or political subdivision thereof and described in Sections 19-9-27, 19-13-17, 21-33-325, 21-33-325.1, 27-39-325, 37-29-101, 37-29-267, 37-29-425, 37-41-93, 37-59-37, 37-59-39, 37-59-41, 51-7-15, 51-7-27, 51-29-5 and 51-31-73, Mississippi Code of 1972, shall bear interest at a rate not to exceed eleven percent (11%) per annum.

SOURCES: Laws, 1983, ch. 541, § 3; Laws, 1984, ch. 506, § 14; Laws, 1985, ch. 384; Laws, 1985, ch. 477, § 18; Laws, 2009, ch. 485, § 3, eff from and after passage (approved Apr. 6, 2009.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted the word "Section" preceding "21-33-325.1." The Joint Committee ratified the correction at its July 22, 2010, meeting.

CHAPTER 21

Trusts and Combines in Restraint or Hindrance of Trade

§ 75-21-15. To defraud in public contracts.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "fined not less than twenty-five nor more than one thousand " to "fined not less than Twenty-five Dollars ($25.00) nor more than One Thousand Dollars ($1,000.00)." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 24

Regulation of Business for Consumer Protection

GENERAL PROVISIONS

§ 75-24-15. Action or counterclaim by individual suffering loss; class actions prohibited.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "as a result of the use of employment" to "as a result of the use or employment" in subsection (1). The Joint Committee ratified the correction at its July 22, 2010 meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 75-24-29. Persons conducting business in Mississippi required to provide notice of a breach of security involving personal information to all affected individuals; enforcement.

(1) This section applies to any person who conducts business in this state and who, in the ordinary course of the person's business functions, owns, licenses or maintains personal information of any resident of this state.

(2) For purposes of this section, the following terms shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Breach of security" means unauthorized acquisition of electronic files, media, databases or computerized data containing personal information of any resident of this state when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable;

(b) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements:

(i) Social security number;

(ii) Driver's license number or state identification card number; or

(iii) An account number or credit or debit card number in combination with any required security code, access code or password that would permit access to an individual's financial account; "personal information" does not include publicly available information that is lawfully made

available to the general public from federal, state or local government records or widely distributed media;

(iv) "Affected individual" means any individual who is a resident of this state whose personal information was, or is reasonably believed to have been, intentionally acquired by an unauthorized person through a breach of security.

(3) A person who conducts business in this state shall disclose any breach of security to all affected individuals. The disclosure shall be made without unreasonable delay, subject to the provisions of subsections (4) and (5) of this section and the completion of an investigation by the person to determine the nature and scope of the incident, to identify the affected individuals, or to restore the reasonable integrity of the data system. Notification shall not be required if, after an appropriate investigation, the person reasonably determines that the breach will not likely result in harm to the affected individuals.

(4) Any person who conducts business in this state that maintains computerized data which includes personal information that the person does not own or license shall notify the owner or licensee of the information of any breach of the security of the data as soon as practicable following its discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person for fraudulent purposes.

(5) Any notification required by this section shall be delayed for a reasonable period of time if a law enforcement agency determines that the notification will impede a criminal investigation or national security and the law enforcement agency has made a request that the notification be delayed. Any such delayed notification shall be made after the law enforcement agency determines that notification will not compromise the criminal investigation or national security and so notifies the person of that determination.

(6) Any notice required by the provisions of this section may be provided by one (1) of the following methods: (a) written notice; (b) telephone notice; (c) electronic notice, if the person's primary means of communication with the affected individuals is by electronic means or if the notice is consistent with the provisions regarding electronic records and signatures set forth in 15 USCS 7001; or (d) substitute notice, provided the person demonstrates that the cost of providing notice in accordance with paragraph (a), (b) or (c) of this subsection would exceed Five Thousand Dollars ($5,000.00), that the affected class of subject persons to be notified exceeds five thousand (5,000) individuals or the person does not have sufficient contact information. Substitute notice shall consist of the following: electronic mail notice when the person has an electronic mail address for the affected individuals; conspicuous posting of the notice on the Web site of the person if the person maintains one; and notification to major statewide media, including newspapers, radio and television.

(7) Any person who conducts business in this state that maintains its own security breach procedures as part of an information security policy for the treatment of personal information, and otherwise complies with the timing requirements of this section, shall be deemed to be in compliance with the

security breach notification requirements of this section if the person notifies affected individuals in accordance with the person's policies in the event of a breach of security. Any person that maintains such a security breach procedure pursuant to the rules, regulations, procedures or guidelines established by the primary or federal functional regulator, as defined in 15 USCS 6809(2), shall be deemed to be in compliance with the security breach notification requirements of this section, provided the person notifies affected individuals in accordance with the policies or the rules, regulations, procedures or guidelines established by the primary or federal functional regulator in the event of a breach of security of the system.

(8) Failure to comply with the requirements of this section shall constitute an unfair trade practice and shall be enforced by the Attorney General; however, nothing in this section may be construed to create a private right of action.

SOURCES: Laws, 2010, ch. 489, § 1, eff from and after July 1, 2011.

SERVICE CONTRACTS

§ 75-24-91. Service contract defined; service contract not a contract for insurance and exempt from provisions of Title 83; service contract subject to Mississippi Consumer Protection Act.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first sentence of subsection (1) by substituting "The term" for "The terms" and "if the operational" for "if so operational." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CREDIT CARD PROCESSING HARDWARE AND SOFTWARE

SEC.

§ 75-24-231. Credit card processing hardware and software required to meet requirements of federal law.

(1) Beginning January 1, 2011, all business entities and their agents providing credit card processing hardware or software to retail merchants for the transaction of business shall provide such hardware or software that meets the requirements of the Fair and Accurate Credit Transactions Act of 2003 and does not print on a receipt provided to the cardholder: (a) more than the last five (5) digits of the credit card or debit card account number, or (b) the expiration date of the credit card or debit card.

(2) The provisions of subsection (1) of this section apply only to receipts that are electronically printed and do not apply to transactions in which the sole means of recording the cardholder's credit card or debit card account number is by handwriting or by an imprint or copy of the credit card or debit card.

(3) Any business entity providing credit card processing hardware or software to retail merchants who willfully violates the provisions of subsection (1) of this section shall be subject to a fine of not more than One Hundred Dollars ($100.00) for a first offense and not more than Five Hundred Dollars ($500.00) for a second offense, and shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) for each subsequent offense.

SOURCES: Laws, 2010, ch. 447, § 1, eff from and after July 1, 2010.

CHAPTER 25

Registration of Trademarks and Labels

§ 75-25-25. Owner of famous mark entitled to injunction against another's commercial use of the famous mark; "famous" defined; geographic limitations of injunctive relief; permitted uses of famous mark.

JUDICIAL DECISIONS

2. Denial of preliminary injunction.

In an action brought by a restaurant alleging unfair trade practices, unfair competition, and trademark dilution under 15 U.S.C.S. § 1125 and Miss. Code Ann. § 75-25-25, competitors were not entitled to enjoin under 28 U.S.C.S. §§ 1651 and 2283 of the All Writs Act and the Anti-Injunction Act a pending state suit also brought by the restaurant against the competitors because the issues presented in the state case were not the same issues that were presented to and decided by the court when it denied the restaurant's motion for a preliminary injunction under 15 U.S.C.S. § 1116. Brennan's, Inc. v. Brennan, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 38746 (S.D. Miss. May 7, 2009).

§ 75-25-31. Good faith acquisition of marks.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error by substituting "rights or the enforcement" for "rights of the enforcement." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 26

Mississippi Uniform Trade Secrets Act

§ 75-26-13. Statute of limitations.

JUDICIAL DECISIONS

1. Claims time-barred.

Plaintiff employer's business tort and trade secret claims against defendant competitor, based on the employer's former employee, in violation of a non compete agreement, selling to his former customers, were time-barred under Miss. Code Ann. §§ 15-1-49, 75-26-13, because § 15-1-49(2)'s discovery rule did not toll the limitations period since the employer's representative testified that learning competing sellers' identities was not difficult. State Indus. Prods. Corp. v. Beta Tech. Inc., 575 F.3d 450 (5th Cir. 2009).

CHAPTER 27

Weights and Measures

ARTICLE 1.

WEIGHTS AND MEASURES LAW OF 1964.

§ 75-27-59. Offenses and penalties.

(1) Any person who by himself, by his agent, or as the agent of another person, commits any one (1) of the acts enumerated in paragraphs (a) through (j) of this subsection is guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment; and upon a second or subsequent conviction, he shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. It is unlawful for a person to:

(a) Use or have in possession for the purpose of using for any commercial purpose specified in Section 75-27-23, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure of any device or instrument used to or calculated to falsify any weight or measure.

(b) Use or have in possession for the purpose of current use for any commercial purpose specified in Section 75-27-23, a weight or measure that does not bear a seal or mark such as is specified in Section 75-27-31, unless such weight or measure has been exempted from testing by the provisions of

Section 75-27-23, or by a regulation of the director issued under the authority of Section 75-27-19.

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(d) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(e) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(f) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(i) Buy or sell pulpwood by any means other than those prescribed in Section 75-27-39.

(j) Violate any provision of this article or of the regulations promulgated under the provisions of this article for which a specific penalty has not been prescribed.

(2) Any person who by himself, by his agent, or as the agent of another person, commits any of the acts enumerated in subsection (1) of this section may be assessed by the director, or his designee, an administrative penalty of:

(a) Not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for a first violation;

(b) Not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) for a second violation committed within twelve (12) months of the first violation; and

(c) Not less than One Thousand Dollars ($1,000.00) nor more than Three Thousand Dollars ($3,000.00) for a third violation committed within eighteen (18) months from the date of the first violation.

(3) Any person, subject to an administrative penalty, shall have a right to request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The director, or his designee, is authorized to conduct the hearing after giving appropriate notice to the respondent. The decision of the director, or his designee, shall be subject to appropriate judicial review.

(4)(a) If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, he shall pay the civil penalty within thirty (30) days of the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the director in any court of competent jurisdiction.

(b) Any civil penalty collected under this section shall be transmitted to the General Fund.

SOURCES: Codes, 1942, § 5132-29; Laws, 1964, ch. 221, § 29; Laws, 1974, ch. 392, § 2; Laws, 2013, ch. 446, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — - Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in this section. The subsection designations for (1)(h) through (k) were redesignated as (1)(g) through (j). Also, a reference to paragraph (k) in subsection (1) was changed to (j). The Joint Committee ratified the correction at its August 1, 2013, meeting

Amendment Notes — The 2013 amendment redesignated the former first paragraph as (1); redesignated former (1) through (10) as (1)(a) through (j); added (2) through (4); and in (1), substituted "Any person who by himself, by his agent, or as the agent of another person, commits any one (1) of the acts enumerated in paragraphs (a) through (j) of this subsection is" for "Any person who by himself or by his servant or agent, or as the servant or agent of another person, performs any one (1) of the acts enumerated in subparagraphs (1) through (9) of this section, shall be" at the beginning, and added "It is unlawful for a person to" at the end, and made minor stylistic changes throughout.

Article 3.

Weights and Measures of Particular Commodities.

§ 75-27-103. Penalty for using short weights or measures.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction by substituting "not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00)" for "not less than five nor more than fifty dollars." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 29

Sale and Inspection of Food and Drugs

Article 5.

Syrup Containers.

Sec.

§ 75-29-201. Labeling requirements.

(1) Every container of syrup sold, offered, or exposed for sale, through a retail outlet, by an individual, firm or corporation in the State of Mississippi shall have on the outside of each container a paper label, permanent type stamped imprint, or embossed material on the container itself, plainly printed in the English language, and truly certifying the net contents of the packet, the name, brand, and the name and address of the person, or processor, offering such syrup for sale, and a true statement of the contents contained therein.

(2) It shall be unlawful for any individual, firm, organization or corporation to label, sell, offer for sale or expose for sale at the retail level of trade any product as "pure syrup" that does not meet the minimum requirements established by the Mississippi Department of Agriculture and Commerce. Syrup from the juice of sugar cane or sorghum may be labeled "pure cane" or "pure sorghum" syrup to coincide with the contents therein. Any other type of syrup must show the name of all ingredients with ingredients listed in descending order of predominance of weight.

(3) It shall be unlawful for any manufacturer or distributor of syrup or syrup products to use a fictitious name or address on the container label.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1973, ch. 303, § 1 (a); Laws, 2013, ch. 323, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added subsection designations; in (2), added the first sentence, substituted "with ingredients listed in descending order of predominance of weight" for "used in making same" at the end of the second sentence; and added (3).

§ 75-29-202. Records of names and addresses of manufacturers of syrup.

Distributors are required to keep records of the names and addresses of the manufacturers whose syrup they distribute for a period of three (3) years and to provide that information to the commissioner upon request to aid the commissioner in locating the source of adulterated syrup or syrup products.

SOURCES: Laws, 2013, ch. 323, § 5, eff from and after July 1, 2013.

§ 75-29-203. Enforcement of article.

The Mississippi Department of Agriculture and Commerce is hereby vested with the authority and responsibility for carrying out the provisions of this article, and the Commissioner of Agriculture and Commerce, or his representative, shall be furnished samples of syrup or syrup products from the

individual, firm organization or corporation, upon request, and shall have the products analyzed by the state chemist.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 2013, ch. 323, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment substituted "Mississippi Department of Agriculture and Commerce" for "commissioner of Agriculture and Commerce of Mississippi" and "shall be furnished samples of syrup or syrup products from the individual, firm organization or corporation, upon request, and shall have the products" for "may purchase a container of said syrup and have same."

§ 75-29-205. Stop sales; pick ups and refunds where syrup or syrup products sold in violation of article.

The Commissioner of Agriculture and Commerce is authorized, in his discretion, to issue an order to stop the sale or distribution of any syrup or syrup products found to be in violation of this article. Upon written notice by the commissioner to the manufacturer or distributor of the syrup or syrup products sold in violation of this article, the syrup or syrup products shall be picked up by the manufacturer or distributor and the buyer of the syrup or syrup products shall be refunded the purchase price by the manufacturer or distributor. Any order to stop the sale of syrup or syrup products may be appealed to the Chancery Court of the First Judicial District of Hinds County or the chancery court in the county where the violation occurred within thirty (30) days of receipt of the order.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1973, ch. 303, § 1 (c); Laws, 2013, ch. 323, § 3, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment inserted "or syrup products" following "syrup" throughout the section; added the last sentence; and made minor stylistic changes.

§ 75-29-207. Repealed.

Repealed by Laws of 2013, ch. 323, § 6, eff from and after July 1, 2013.

§ 75-29-207. [Codes, 1942, § 7019.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7.]

Editor's Note — Former § 75-29-207 prohibited the use of a fictitious name or address on a container label. For present similar provisions, see § 75-29-201(3).

§ 75-29-211. Penalties; appeals of administrative penalties.

(1) Except as otherwise provided in subsection (2) of this section, any person violating the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished for such violation; and each infraction shall constitute a separate offense.

(2) Any manufacturer or distributor found to be in violation of the labeling requirements of Section 75-29-201, shall, upon conviction therefor, be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned for a period of time not to exceed ninety (90) days, or both.

(3) Any person who by himself, by his agent, or as the agent of another person, commits a violation of this chapter may be assessed by the commissioner, or his designee, an administrative penalty of:

(a) Not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for a first violation;

(b) Not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) for a second violation within twelve (12) months of the first violation; and

(c) Not less than One Thousand Dollars ($1,000.00) nor more than Three Thousand Dollars ($3,000.00) for a third violation within eighteen (18) months from the date of the first violation.

(4) Any person subject to an administrative penalty shall have a right to request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The commissioner, or his designee, shall be authorized to conduct the hearing after giving appropriate notice to the respondent. The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. The decision of the commissioner or his/her designee shall be subject to appropriate judicial review.

(5) If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, he shall pay the civil penalty within thirty (30) days of the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the commissioner in any court of competent jurisdiction. Any civil penalty collected under this article shall be transmitted to the General Fund.

(6) In lieu of, or in addition to, the penalties provided, the commissioner shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of this article and the rules and regulations, in the appropriate circuit, chancery, county or justice court in which venue may lie. The commissioner may obtain mandatory or prohibitory injunctive relief, whether temporary or permanent, and it shall not be necessary for the state to post a bond or prove that no adequate remedy is available at law.

SOURCES: Codes, 1942, § 7109.5; Laws, 1960, ch. 159, §§ 1-4; Laws, 1962, ch. 169, §§ 1-7; Laws, 1980, ch. 322; Laws, 2013, ch. 323, § 4, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added (3) through (6).

ARTICLE 17.

CHARITABLE DONATION OF FOOD BY RESTAURANT OR OTHER FOOD ESTABLISHMENT.

SEC.
75-29-851. Donations of food to charitable organizations; waiver of liability.

§ 75-29-851. Donations of food to charitable organizations; waiver of liability.

The State Department of Health is authorized to allow restaurants and food establishments which have a current permit issued by the department to dispose of food that has been frozen or properly preserved for human consumption through donation to charitable facilities, charitable organizations and/or individuals providing charitable services. The executive director of the charitable facility or organization receiving such food, or his authorized designee, shall agree to a waiver of liability in favor of the restaurant or food establishment stating that such donations are being provided in the condition used by the restaurant or food establishment, and without warranty of any nature.

SOURCES: Laws, 2009, ch. 534, § 2, eff from and after July 1, 2009.

Editor's Note — This section is set out above to correct a typographical error that appears in the section text in the main volume. Near the end of the first sentence, "charitable organizations and/r individuals" was corrected to read "charitable organizations and/or individuals."

ARTICLE 19.

REGULATION OF NUTRITIONAL LABELING FOR FOOD AND CONSUMER INCENTIVE ITEMS.

SEC.
75-29-901. Regulation of consumer incentive items and nutrition labeling for certain foods reserved to legislature; political subdivisions prohibited from certain actions; relation to federal law.

§ 75-29-901. Regulation of consumer incentive items and nutrition labeling for certain foods reserved to legislature; political subdivisions prohibited from certain actions; relation to federal law.

(1) As used in this section:

(a) "Food nutrition information" includes, but is not limited to, the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, sodium, and allergen content of food. "Food nutrition information" also includes the designation of food as healthy or unhealthy.

(b) "Political subdivision" means any county, municipality, town, district, instrumentality of the state, public corporation, body corporate, commission, board, agency, authority, public body, politic or other public entity

responsible for governmental activities in geographic areas smaller than that of the state.

(c) "Consumer incentive item" means any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemats, or other premium, prize or consumer product that is associated with a meal served by or acquired from a food service operation.

(2) The regulation of consumer incentive items and nutrition labeling for food and nonalcoholic beverages that are menu items in restaurants, retail food establishments, and vending machines is reserved to the Legislature and may be regulated only by legislation of statewide application enacted after March 18, 2013. The regulation of the provision of food nutrition information and consumer incentive items at food service operations and how food service operations are characterized are matters of general statewide interest that require statewide regulation, and rules adopted under this section constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information and consumer incentive items at food service operations in this state. Rules adopted under this section shall be applied uniformly throughout this state.

(3) No political subdivision shall do any of the following:

(a) Enact, adopt or continue in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(b) Condition any license, permit or regulatory approval upon the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(c) Ban, prohibit, or otherwise restrict food at food service operations based upon the food's nutrition information or upon the provision or nonprovision of consumer incentive items;

(d) Condition any license, permit or regulatory approval for a food service operation upon the existence or nonexistence of food-based health disparities;

(e) Where food service operations are permitted to operate, ban, prohibit, or otherwise restrict a food service operation based upon the existence or nonexistence of food-based health disparities as recognized by the department of health, the institute of health, or the centers for disease control.

(f) Restrict the sale, distribution, growing, raising or serving of foods and nonalcoholic beverages that are approved for sale by the USDA or other federal or state government agencies.

(4) This section shall not be interpreted as being more restrictive than any federal law or affecting in any manner the regulation of the nutrition labeling of food that is a menu item in restaurants, retail food establishments, and vending machines pursuant to the federal Food, Drug and Cosmetic Act, 21 USC 343(q)(5)(H).

SOURCES: Laws, 2013, ch. 370, § 1, eff from and after passage (approved Mar. 18, 2013.)

ARTICLE 21.

COTTAGE FOOD OPERATIONS.

SEC.
75-29-951. Regulation of cottage food operations.

§ 75-29-951. Regulation of cottage food operations.

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of Section 41-3-18 if the cottage food operation complies with the section and has annual gross sales of cottage food products that do not exceed Twenty Thousand Dollars ($20,000.00).

(b) For purposes of this subsection, a cottage food operations annual gross sales include all sales of cottage food products at any location, regardless of the types of products sold or the number of persons involved in the operation. A cottage food operation must provide the department, upon request, with written documentation to verify the operation's annual gross sales.

(2) A cottage food operation may not sell or offer for sale cottage food products over the Internet, by mail order, or at wholesale or to a retail establishment. Cottage food products are nonpotentially hazardous food products as defined by the department.

(3) A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information:

(a) The name and address of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen information as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements.

(g) The following statement printed in at least ten-point type in a color that provides a clear contrast to the background of the label: "Made in a cottage food operation that is not subject to Mississippi's food safety regulations."

(4) This section does not exempt a cottage food operation from any federal tax law, rule, regulation, or certificate that applies to all cottage food operations.

(5)(a) The department may investigate any complaint which alleges that a cottage food operation has violated an applicable provision of this chapter or rule adopted under this chapter.

(b) Only upon receipt of a complaint, the department's authorized officer or employee may enter and inspect the premises of a cottage food operation to determine compliance with this chapter and department rules. A cottage food operation's refusal to permit the department's authorized officer or employee entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to Section 41-3-59.

(6) This section does not apply to a person operating under a food permit issued pursuant to Section 41-3-18.

SOURCES: Laws, 2013, ch. 481, § 1, eff from and after passage (approved April 1, 2013).

CHAPTER 44

Grain Warehouses

§ 75-44-31. Amount of warehouseman's bond; blanket bonds; increasing amount of bond.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a correction to a statutory reference in subsection (1) by substituting "subsection (3) of this section" for "paragraph (3) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 45

Commercial Feeds and Grains

ARTICLE 7.

GRAIN DEALERS LAW.

§ 75-45-304. Licensing requirements for grain dealers.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "a license issued pursuant to this article" for "a license issued pursuant to this chapter." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 47

Commercial Fertilizers

§ 75-47-17. Plant food deficiency.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in a statutory reference in subsection (2) by substituting "Section 75-47-5 paragraph (c)(1) B, C, and D" for "Section 75-47-5 paragraph (c) B, C, and D." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 49

Factory-Built Homes

§ 75-49-1. Short title.

Cross References — Authority of State Chief Deputy Fire Marshal and deputy state fire marshals to make arrests and execute all warrants for violations of this chapter and Chapter 11, Title 45, see §45-11-1.

§ 75-49-19. Violations; penalties; exceptions.

Cross References — Authority of State Chief Deputy Fire Marshal and deputy state fire marshals to make arrests and execute all warrants for violations of this chapter and Chapter 11, Title 45, see §45-11-1.

§ 75-49-21. Permit fees for manufactured or mobile homes.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by substituting "as defined in this chapter" for "as defined in the Uniform Standards Code for Factory Manufactured Movable Homes Law." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 55

Gasoline and Petroleum Products

SEC.

§ 75-55-5. Definitions; specifications; rules and regulations [Repealed effective July 1, 2016].

(1) The words, terms and phrases as used in this chapter shall have the following meanings, unless the context requires otherwise:

(a) The term "commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce, or his agents and employees.

(b) The term "State Chemist" means the Director of the Mississippi State Chemical Laboratory, or his agents and employees.

(c) The term "ASTM" means an international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

(d) The term "person" shall include any individual, firm, copartnership, joint venture, association, corporation, estate, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(e) The term "illuminating oil" shall include coal oil, kerosene or other petroleum products used for illuminating purposes.

(f) The term "lubricating oil" means all petroleum-based oils or synthetic lubricants intended for use in the crankcase of an internal combustion engine, either spark ignition or diesel type. The purpose of the lubricating oil is to reduce friction between two (2) solid surfaces moving relative to one another.

(g) The term "gasoline pump" shall include pumps, meters and all measuring devices used for measuring gasoline and all oxygenated blended fuels; the term "diesel fuel pump" shall include pumps, meters and all measuring devices used for measuring diesel fuel; the term "kerosene pump" shall include pumps, meters and all measuring devices used for measuring kerosene; the term "liquefied compressed gas pump" shall include pumps, meters and all measuring devices used for measuring liquefied compressed gas.

(h) The term "gasoline" shall include (i) all products commonly or commercially known or sold as gasoline (excluding casing head and absorption or natural gasoline) regardless of their classification or uses; and (ii) a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark ignition, internal combustion engines.

(i) The term "commercial gasoline" shall mean a liquid suitable for use as a fuel in spark ignition combustion engines, and shall be free of undissolved water, suspended matter and of any harmful ingredient or component and which, in addition, meets the following test requirements as set out in ASTM D4814, and it shall be the intent of this chapter that the state specifications may be kept current with ASTM D4814 as illustrated below:

(i) Corrosion ASTM D130. A clean copper strip shall not show more than extremely slight discoloration equivalent to ASTM Strip No. 1, when submerged in the gasoline for three (3) hours at one hundred twenty-two (122°) degrees Fahrenheit, as determined by ASTM D130.

(ii) Distillation range. For each month the distillation range shall be that specified by the vapor pressure class requirement for that month. Distillation temperature limits shall be consistent with the corresponding vapor pressure class during the months affected by federal or state regulation which restrict vapor pressure. If the vapor pressure limit is

between two (2) classes, the distillation temperature limits of the least restrictive class shall be acceptable. The method of test shall be ASTM D86.

(iii) Residue. The residue, after evaporation, shall not exceed two percent (2%), as determined by ASTM D86.

(iv) Gum test. The gum shall not exceed five (5) milligrams per one hundred (100) milliliters, after the extraction of the residue with a-heptane, as determined by ASTM D381.

(v) Sulphur. The sulphur content shall not exceed ten one-hundredths percent (0.10%) for unleaded gasoline or fifteen one-hundredths percent (0.15%) for leaded gasoline, as determined by ASTM D2622 or D4045.

(vi) Vapor pressure. The vapor pressure during the months of July and August shall not exceed ten (10) pounds per square inch at one hundred (100°) degrees Fahrenheit, and during the months of November, December, January, February and March shall not exceed thirteen and one-half (13-½) pounds per square inch at one hundred (100°) degrees Fahrenheit.

The vapor pressure during the remaining months of the year shall not exceed eleven and five-tenths (11.5) pounds per square inch at one hundred (100°) degrees Fahrenheit. The method of determination shall be ASTM D4953. Federal or state regulation restricting vapor pressure to lower levels shall preempt these standards during the applicable months.

(vii) Vapor liquid equilibrium. A maximum value of twenty (20) for the vapor liquid equilibrium test during the months July and August shall be obtained at a temperature of one hundred thirty-three (133°) degrees Fahrenheit; for the months of November, December, January, February and March it shall be obtained at a temperature of one hundred sixteen (116°) degrees Fahrenheit; for the other months of the year it shall be obtained at one hundred twenty-four (124°) degrees Fahrenheit. The method of determination shall be ASTM D2533 or ASTM D4814, appendix X2.

(viii) Lead specifications. The unleaded gasoline shall contain less than five hundredths (0.05) gram of lead per gallon, and the leaded gasoline shall contain a minimum of five hundredths (0.05) gram of lead and less than four and two-tenths (4.2) grams of lead per gallon. The method of analysis should be ASTM D3237, (Atomic Absorption Spectrometry), ASTM D2599 (X-ray Spectrometry) or ASTM D2547 (Volumetric Chromate).

(ix) Classification.

1. "Leaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-three (93). The research octane number shall be at least ninety-six (96).

2. "Unleaded premium grade gasoline" shall have an (R + M)/2 octane antiknock index of at least ninety-one (91). The research octane number shall be at least ninety-four (94).

3. "Mid-grade unleaded gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety-two (92).

4. "Leaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-nine (89). The research octane number shall be at least ninety (90).

5. "Unleaded regular grade gasoline" shall have an (R + M)/2 octane antiknock index of at least eighty-seven (87). The research octane number shall be at least ninety (90), and the motor octane number shall be at least eighty-two (82).

6. "Third-grade gasoline" shall have an (R + M)/2 octane antiknock of not more than eighty-seven (87).

The methods of octane determination shall be ASTM D2699 for the research octane number (R) and ASTM D2700 for the motor octane number (M), or ASTM D2885 for both the research octane number and the motor octane number. The (R + M)/2 octane antiknock index shall be the average of the research and motor octane numbers. All retail pumps or delivery devices shall be labeled with the appropriate (R + M)/2 octane antiknock index in accordance with the Federal Trade Commission Octane Posting and Certification Regulation 306. No commercial gasoline shall be colored mahogany.

(j) The term "oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates. The term "oxygenate" means an oxygen containing ashless organic compound which may be used as a fuel supplement or additive and includes alcohols and ethers. "Gasoline-oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to, the following designations:

(i) "Gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous denatured alcohol and ninety (90) volume percent unleaded gasoline, regardless of other name, label or designation.

(ii) "Leaded gasohol" meaning any motor fuel containing a nominal ten (10) volume percent anhydrous, denatured ethanol and ninety (90) volume percent leaded gasoline, regardless of other name, label or designation.

(iii) Any gasoline-oxygenate blend which meets the United States Environmental Protection Agency's "substantially similar" rule, Section 211(f)(1) of the Clean Air Act, 42 USCS 7545(f)(1).

(iv) Any gasoline-oxygenate blend for which there is an existing Clean Air Act waiver issued by the United States Environmental Protection Agency.

(k) "Alcohol blended fuel" means gasohol or leaded gasohol.

(*l*) "Anhydrous, denatured ethyl alcohol (ethanol)" means normal two hundred (200) proof ethanol to which has been added a maximum of five (5) volumes of approved denaturant(s) to one hundred (100) volumes of ethanol and containing not more than one and twenty-five hundredths percent (1.25%) water by weight as determined by ASTM E203.

(m) "Approved denaturant(s)" means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and both the State Chemist and the Commissioner of Agriculture and Commerce. Gasoline-oxygenate blends shall meet the specifications set forth in the most recent edition of the Annual Book of ASTM standards and supplements thereto, and revisions thereof, except where amended or modified by the Commissioner and State Chemist.

(n) The term "oil" as used in this chapter shall include diesel fuel, kerosene, fuel oil, distillate, gas oil, tractor fuel or any other product other than gasoline, as defined in this chapter, which is usable as fuel in an internal combustion engine, and any product which, on distillation in accordance with the method of test of the American Society for Testing and Materials shows not more than ten percent (10%) recovered when the thermometer shows two hundred sixty-one (261°) degrees Fahrenheit; and not more than ninety-five percent (95%) recovered when the thermometer shows four hundred sixty-five (465°) degrees Fahrenheit or more; provided that nothing in this paragraph shall be construed to include oils received or sold as lubricants when such oils cannot be used as a fuel in internal combustion engines.

(o) "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without the presence of an electric spark.

Specifications: The fuel oils herein specified shall be hydrocarbon oils free from acids, grit and fibrous or other foreign material. Three (3) grades of such oils are specified and these shall conform to the detailed requirements in the current American Society for Testing and Materials Specifications for Diesel Fuel Oils (ASTM D975), except for the sulphur content of Grade 2-D. All tests shall be in accordance with the applicable American Society for Testing and Materials method as set forth in the current ASTM Designation D975. Diesel fuel requirements are listed below:

	Grade 1-D	Grade 2-D	Grade 4-D
Flash point, degrees F. D93	Min. 100	Min. 125	Min. 130
Water & sediment, % by volume, D1796	Max. 0.05	Max. 0.05	Max. 0.5
Carbon residue on 10% residium, % D524	Max. 0.15	Max. 0.35	_____
Ash, % by weight, D482	Max. 0.01	Max. 0.01	Max. 0.1
Distillation, 90% point, degrees F., D86	_____	Min. 540	_____
	Max. 550	Max. 640	_____
Viscosity @ 100 degrees F. kinematic-centistokes D445	Min. 1.3	Min. 2.0	Min. 5.5
or	Max. 2.4	Max. 4.1	Max. 24.0

	Grade 1-D	Grade 2-D	Grade 4-D
Viscosity @ 100 degrees F., Saybolt Universal Sec.	_____	Min. 32.6	Min. 45
	Max. 34.4	Max. 40.1	Max. 125
Sulphur, % by weight, D129	Max. 0.5	Max. 1.0	Max. 2.0
Copper strip corrosion, D130	Max. No. 3	Max. No. 3	_____
Cetane number, D613 or D976	Min. 40	Min. 40	Min. 30

(p) The word "kerosene" shall include lamp oil, illuminating oil and coal oil which shall conform to the detailed requirements set forth in the current American Society for Testing and Materials Specification for Kerosene (ASTM D3699). All tests shall be in accordance with the applicable American Society for Testing and Material Methods as set forth in ASTM D3699. The detailed requirements are listed below:

(i) The oil shall be free of water and suspended matter.

(ii) The color shall not be darker than number plus sixteen (16) on the Saybolt scale, as determined by ASTM D156.

(iii) The flash point shall, by ASTM D56, not be lower than one hundred (100°) degrees Fahrenheit when determined in Tagliabue closed type tester, as determined by ASTM D56.

(iv) The sulphur content shall not exceed four one-hundredths percent (0.04%) for No. 1-K kerosene and thirty one-hundredths percent (0.30%) for No. 2-K kerosene. The method of determination shall be ASTM D1266. No. 1-K kerosene is a special low-sulphur grade kerosene suitable for use in nonflue-connected kerosene burner appliances and in wick-fed illuminating lamps. No. 2-K kerosene is suitable for use in flue-connected burner appliances and in wick-fed illuminating lamps.

(v) The distillation ten percent (10%) point shall not be higher than four hundred one (401°) degrees Fahrenheit, as determined by ASTM D86.

(vi) The distillation end point shall not be higher than five hundred seventy-two (572°) degrees Fahrenheit, as determined by ASTM D86.

(vii) The oil shall not show a cloud point at five (5°) degrees Fahrenheit, as determined by ASTM D2500.

(viii) The oil shall burn freely and steadily for sixteen (16) hours, as determined by ASTM D187.

(ix) The gravity shall not be less than degrees API 41, as determined by ASTM D1298.

(x) The corrosion test results shall be No. 1 Maximum in a three-hour at two hundred twelve (212°) degrees Fahrenheit test, as determined by ASTM D130.

(q) Racing gasoline means any gasoline which is sold for racing purposes. Racing gasoline may be sold from retail dispensing equipment under the following conditions:

(i) The product brand name and octane number shall be registered with the Commissioner of Agriculture and Commerce and the State Chemist.

(ii) The manufacturer shall forward a list of marketers selling these product(s) and the product(s) being sold by each marketer.

(iii) Marketers shall register their retail outlets by location and provide a list of the product(s) sold for each retail outlet.

(iv) The dispensing equipment shall contain a conspicuous sign stating that the fuel is racing gasoline. The dispensing equipment shall not contain any kind of representation indicating that the product is suitable for vehicles other than for racing.

(v) The dispensing equipment shall be dedicated to and isolated from any other motor fuel dispensing equipment in a manner that a vehicle cannot access both the commercial gasoline and the racing gasoline at the same time.

(vi) Any violation shall result in revocation of the approval to market and/or confiscation of the product.

(vii) The Commissioner of Agriculture and Commerce (the "commissioner") and the State Chemist are hereby given authority to change the specifications set forth in this section to comply with the currently recommended ASTM or federally required specifications.

(2) This section shall stand repealed on July 1, 2016.

SOURCES: Codes, 1942, § 5083; Laws, 1938, ch. 145; Laws, 1942, ch. 245; Laws, 1946, ch. 263, § 3; Laws, 1948, ch. 316, § 1; Laws, 1950, ch. 477, § 1; Laws, 1952, ch. 345, § 1; Laws, 1956, ch. 394; Laws, 1958, ch. 187; Laws, 1962, ch. 195; Laws, 1966, ch. 624, § 1; Laws, 1969, Ex Sess, ch. 24, § 1; Laws, 1978, ch. 357, § 1; Laws, 1980, ch. 417, § 1; Laws, 1984, ch. 452, § 2; Laws, 1986, ch. 395, § 7; Laws, 1988, ch. 482, § 2; Laws, 1990, ch. 450, § 2; Laws, 2008, ch. 486, § 1; Laws, 2010, ch. 397, § 1; Laws, 2013, ch. 372, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2010 amendment inserted the second occurrence of "kerosene" in (1)(p)(iv); and substituted "July 1, 2013" for "July 1, 2010" in (2).

The 2013 amendment substituted the (i) and (ii) designations for (1) and (2) in (1)(h); and extended the repealer provision in (2) from "July 1, 2013" to "July 1, 2016."

§ 75-55-37. Penalty [Repealed effective July 1, 2016].

(1) The commissioner or his duly appointed representatives shall have the right to request an inspection of any pump, truck, or other equipment, and if upon such inspection any such pump, truck, or other equipment is found to be inaccurate to the extent that a test thereof shows a deficiency of more than twenty-five (25) cubic inches on a five (5) gallon measurement, or if the right to inspect any such pump, truck, or other equipment is refused or denied the commissioner, or his duly authorized representatives, he or they shall have the right to immediately close and lock said pump and other equipment or to seal same with the commissioner's seal. If such pump, truck, or other equipment is found to be inaccurate but the deficiency is twenty-five (25) cubic inches or less on a five (5) gallon measurement, then the commissioner or his representative shall give the owner or operator thereof forty-eight (48) hours within which to correct such inaccuracy and if such person fails or refuses to correct same

within said period then the commissioner or his representative shall have the right to lock and seal such pump or other equipment in the same manner as provided above.

It shall be prima facie presumed upon any refusal to allow the right to inspect that the pump, truck, or other equipment sought to be inspected is inaccurate to the extent set forth above, or is operating in violation of this chapter. When any such pump or other equipment is locked or sealed, it may not be unlocked or the seal thereon broken except in the presence of a mechanic or other person called for the purpose of repairing the inaccuracy in the machinery of such pump or other equipment, and such inaccuracy shall be immediately thereafter repaired, and the pump or other equipment properly regulated. The commissioner may, in his discretion, require an affidavit from the mechanic repairing such pump or other equipment, or any other proof which he may deem advisable to the effect that said pump was unlocked or the seal thereon broken in the presence of such mechanic, and that the inaccuracies therein were thereupon completely repaired or regulated.

When a state or factory seal is broken on the measuring adjustment device on a retail pump, it shall be the duty of the station operator to notify the commissioner by United States mail, within twenty-four (24) hours, after the breaking of said seal. After the commissioner has received written notice as herein provided and he or his agent has resealed the measuring adjustment device on the pump or pumps at this station, it shall be unlawful for the owner or operator of the station or any of his employees to break a state or factory seal on the measuring adjustment device on any pump at the station during the ensuing ninety (90) days without the prior approval of the commissioner or his agent.

The State of Mississippi shall have a lien on all pumps, trucks, and other equipment used by any distributor, or other person, in the operation of his business for any tax or penalty due the State of Mississippi because of any violation of this chapter. Such lien shall be paramount to any and all private liens and all the provisions set out in Chapter 7 of Title 85 of the Mississippi Code of 1972, shall be applicable herein for the purpose of securing the enforcement of said lien, and particularly the right to secure the issuance of a writ of summons and seizure and proceedings had and done after the issuance of said writ shall be applicable. Provided, however, that the commissioner shall not be required to give any bond in any such case.

Any person or officer, agent or employee thereof who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Hundred Dollars ($100.00) for the first offense and not less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00) for each subsequent offense or imprisonment in the county jail for a period not to exceed ninety (90) days or both.

(2) If a person who, by himself, by his agent, or as the servant or agent of another person commits a violation of this chapter, the commissioner or his designee may impose any, all or a combination of the following penalties:

(a) A stop sale order for any engine fuel, nonengine fuel, automotive lubricant or any other petroleum product not in compliance with this

chapter. A remand of the stop sale order may be issued if the engine fuel, nonengine fuel, automotive lubricant or petroleum product is brought into full compliance with this chapter. The stop sale order may be appealed to the commissioner or his designee within twenty (20) days from the receipt of the order.

(b) A warning letter for violations of this chapter.

(c) A civil penalty of not more than Three Thousand Dollars ($3,000.00) per violation. A person may request an administrative hearing within thirty (30) days of receipt of the notice of the penalty. The commissioner or his designee shall conduct a hearing after giving reasonable notice to the person. The decision may be appealed to the Circuit Court of the First Judicial District of Hinds County.

(3) If the person has exhausted his administrative appeals, he shall pay the civil penalty within thirty (30) days after the effective date of the final decision. If the person fails to pay the penalty, the commissioner may bring a civil action in any court of competent jurisdiction to recover the penalty.

(4) The commissioner is authorized to suspend, revoke and/or permanently deny a registration under the Petroleum Products Inspection Law of Mississippi to any person, firm, corporation or other organization determined to be guilty of two (2) or more violations per location, per year, of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto.

(5) In lieu of, or in addition to, the penalties provided above, the commissioner and the State Chemist shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of the Petroleum Products Inspection Law of Mississippi and the rules and regulations in force pursuant thereto, in the appropriate circuit, chancery, county or justice court in which venue may lie. The commissioner and the State Chemist may obtain mandatory or prohibitory injunctive relief, whether temporary or permanent, and it shall not be necessary for the state to post a bond or prove that no adequate remedy is available at law.

(6) All penalties assessed by the commissioner under this section shall be deposited in the State General Fund.

(7) This section shall stand repealed on July 1, 2016.

SOURCES: Codes, 1942, § 5100; Laws, 1938, ch. 145; Laws, 1946, ch. 263, § 20; Laws, 1948, ch. 316, § 3; Laws, 1950, ch. 477, § 4; Laws, 1958, ch. 184; Laws, 1969, Ex Sess, ch. 24, § 11; Laws, 1990, ch. 450, § 14; Laws, 1993, ch. 459, § 1; Laws, 2010, ch. 397, § 2; Laws, 2013, ch. 372, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2010 amendment rewrote (2); added present (3), redesignating the remaining subsections accordingly; substituted "registration" for "license" in (4); and added (7).

The 2013 amendment extended the repealer provision in (7) from "July 1, 2013" to "July 1, 2016", and made minor stylistic changes.

CHAPTER 56

Antifreeze and Summer Coolants

§ 75-56-19. Prohibited acts.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (c) by substituting "the acquisition of a sample" for "the acquisition or a sample." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 57

Liquefied Petroleum Gases

IN GENERAL

§ 75-57-1. Title.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction in this section by substituting "Sections 75-57-1 through 75-57-63" for "This chapter." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 75-57-49. Permitee requirements; proof of financial responsibility; issuance and duration of permits.

(1) Before any person shall be granted a permit to, or shall engage in or continue in the business of the distributing, either wholesale or retail, installing, altering, extending, changing or repairing of any liquefied compressed gas system, appliance or container, or in the business of distributing and selling liquefied compressed gas, either at wholesale or retail, whether from trucks or other vessels, in cylinders or in any other manner, such person shall satisfy the State Liquefied Compressed Gas Board that he or she is of good character, is competent to transact business so as to safeguard the interest of the public, and is financially responsible; and this provision as to financial responsibility shall be met by such person by filing with the State Liquefied Compressed Gas Board evidence that he or she has in force such of the hereinafter listed insurance policies on standard contract forms and written by an insurance company, or companies, qualified to do business in the

State of Mississippi, as the State Liquefied Compressed Gas Board shall require, based upon those activities listed above in which such person is engaged, to wit:

ANY PERSON THAT ENGAGES IN FILLING CYLINDERS AND MOTOR FUEL TANKS WITH LIQUEFIED COMPRESSED GAS ON THEIR PREMISES OR ANY PERSON WHO IS IN THE BUSINESS OF INSTALLING LC GAS CARBURETION OR APPLIANCES:

	Limits of Liability	
	Each Occasion	Aggregate
Manufacturers and Contractors Public Liability	$100,000	$300,000
Products Liability	$100,000	$300,000
Workers' Compensation and Employers' Liability Insurance	State Statute	

ANY PERSON THAT ENGAGES IN ANY PHASE OF THE LIQUEFIED COMPRESSED GAS BUSINESS OTHER THAN CYLINDER-FILLING LOCATIONS:

	Limits of Liability		
	Bodily Injury Each Person	Each Accident	Property Damage Each Accident
Automobile public liability	$500,000	$1,000,000	$1,000,000
	Each Occasion	Aggregate	
Manufacturers and Contractors Public liability	$1,000,000	$1,000,000	
Products liability	$1,000,000	$1,000,000	
Workers' Compensation and Employers' Liability Insurance	State Statute		

(2) The State Liquefied Compressed Gas Board shall not require insurance coverage as specified above unless the hazard of liquefied compressed gases is involved.

(3) No policy issued under the provisions of this chapter may be cancelled before thirty (30) days from the date of receipt by the Commissioner of Insurance of written notice of intention to cancel the policy.

(4) It is expressly provided, however, that in lieu of filing with the State Liquefied Compressed Gas Board evidence that such insurance, as outlined above, is in force, any such person may file with the State Liquefied Compressed Gas Board a good and sufficient surety bond executed by a surety company licensed to do business in this state in the amount of One Million Dollars ($1,000,000.00), which such bond shall be payable to the State of Mississippi and shall be conditioned to guarantee the payment of all damages

which proximately result from any act of negligence on the part of such person, or their agents or employees, while engaged in any of the activities herein specified. In lieu of the surety bond, any such person may execute and file a good and sufficient personal bond in the amount and conditioned as specified above, which such personal bond shall be secured by bonds or other obligations of the State of Mississippi or the United States government, of equal value.

(5) Upon compliance with the provisions of this section, where such compliance is required, and upon compliance with all other provisions of this chapter, the State Liquefied Compressed Gas Board shall issue to such dealer a permit to engage in such business, but not before. All such permits shall be valid until voluntarily surrendered, or until suspended, revoked or cancelled by the State Liquefied Compressed Gas Board, the Commissioner of Insurance or the chancery or circuit court. All permits issued under the provisions of Chapter 170, Laws of 1940, as amended, or Chapter 265, Laws of 1946, shall remain in full force and effect until the expiration date thereof at which time they must be renewed under the terms and conditions of this chapter.

SOURCES: Codes, 1942, § 5104-21; Laws, 1940, ch. 170, 1942, ch. 244; Laws, 1946, ch. 265, § 16; Laws, 1948, ch. 317, § 21; Laws, 1950, ch. 475, § 8; Laws, 1952, ch. 346, § 13; Laws, 1960, ch. 405, § 7; Laws, 1980, ch. 416, § 12; Laws, 1980, ch. 561, § 36; Laws, 1982, ch. 408, § 12; Laws, 1982, ch. 437, § 6; Laws, 1991, ch. 442, § 5; Laws, 1995, ch. 475, § 19; Laws, 2012, ch. 319, § 1, eff from and after passage (approved Apr. 5, 2012.)

Amendment Notes — The 2012 amendment inserted "of good character, is competent to transact business so as to safeguard the interest of the public, and is" preceding "financially responsible" in (1); added paragraph designations (1) through (5); and made minor stylistic changes.

§ 75-57-63. Unlawful trust and combine; impeding competition or monopolizing sales of liquefied petroleum gases or liquefied petroleum gas appliances.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted "Chapter 21, Title 75, Mississippi Code of 1972" following "Section 75-21-3" and the word "said" preceding "Chapter 21 of Title 75." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

STATE LIQUEFIED COMPRESSED GAS BOARD

Sec.

§ 75-57-105. Promulgation and enforcement of regulations by board; conduct of hearings by board.

(1) The board shall promulgate and enforce regulations necessary for the administration of this chapter, and also setting forth the minimum general safety standards for the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquefied compressed gas for fuel purposes and for the odorization of liquefied compressed gas.

(2) The board's regulations shall be in substantial conformity with the published Standards of the National Fire Protection Association for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58) and with the National Fuel Gas Code (NFPA 54) as recommended by the National Fire Protection Association, adopted in accordance with the Mississippi Administrative Procedures Law. The board shall consider the adoption of revised versions of these standards as they are adopted by the National Fire Protection Association; the board may consider the adoption of other standards for matters not addressed by the above standards or amend the above standards if deemed to be in the best interest of the State of Mississippi and with the approval of the Commissioner of Insurance.

(3) The board is authorized to hold hearings, call witnesses, administer oaths, take testimony and obtain evidence in the conduct of its business.

SOURCES: Laws, 1995, ch. 475, § 3; Laws, 2012, ch. 319, § 2, eff from and after passage (approved Apr. 5, 2012.)

Amendment Notes — The 2012 amendment inserted "necessary for the administration of this chapter, and also" following "promulgate and enforce regulations" in (1).

§ 75-57-119. Propane education and research program; establishment of fund; imposition of assessment; refunds; liability; promulgation of rules and regulations; use of funds collected; implementation upon affirmative election; notification requirements.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected the spelling of "Liquefied" throughout this section. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 58

Mississippi Natural Gas Marketing Act

SEC.

§ 75-58-9. Duties and responsibilities of operators marketing gas of non-operators; payments.

(a) On or before ten (10) days after the filing with the board of the initial test results for a gas well or oil well capable of producing gas in commercial quantities, the operator shall furnish, by United States mail, postage prepaid, a copy of the initial test results for the well filed with the board to all non-operators owning a record title interest in the production unit for such well as of a date not more than ninety (90) days prior to the filing with the board of the application to drill.

Upon furnishing the initial test results to all non-operators, the operator shall file with the board a list of all non-operators. Should the address of any non-operator be unknown to the operator after diligent search and inquiry, the operator shall so notify the Board, and any such non-operator shall be deemed for all purposes of this chapter as a consenting non-operator.

(b) The operator shall market the gas of all non-operators in a well subject to this chapter except as follows: (1) any non-operator (a "nonconsenting non-operator") who delivers a written notification to operator's office within thirty (30) days after the mailing to such non-operator the test results required by subsection (a) of this section that such non-operator will be responsible for and will market its share of gas and (2) as otherwise provided herein. After the thirty (30) day notice period has expired, operator shall send a notice to the board identifying which non-operators have elected to be or have been deemed to be consenting non-operators and which non-operators have elected to be nonconsenting non-operators. The operator shall have no obligation to market the gas attributable to any nonconsenting non-operator.

(c) In fulfilling operator's responsibility to market consenting non-operator's gas pursuant to subsection (b) of this section, operator has the continuing option of marketing consenting non-operator's share of gas pursuant to a short-term contract or submitting a qualifying long-term contract to the consenting non-operators.

Should operator desire to market consenting non-operators' share of gas under a long-term contract in a well which is subject to this chapter on or after the date upon which the application to drill the well is filed with the board, operator shall submit by United States mail, postage prepaid, to the consenting non-operators a qualifying long-term contract. Should a consenting non-operator not accept such offer by executing and delivering to the operator at operator's office the qualifying long-term contract within thirty (30) days after the date that operator placed the qualifying long-term contract in the United States mail, then and in such event, the offer to purchase shall be deemed to have expired and such consenting non-operator shall be deemed to have become a non-consenting non-operator at the expiration of such thirty (30) day period, and operator shall thereafter have no further obligation to market the gas owned by that consenting non-operator. The operator shall furnish to the buyer the qualifying long-term contract executed by the consenting non-operators, and shall furnish to the Board a notice designating those consenting

non-operators which have become nonconsenting non-operators. Save and except where the buyer of gas is contractually obligated to operator to offer a qualifying long-term contract to the consenting non-operators, nothing herein contained shall be deemed to constitute an obligation on the part of any buyer of gas to offer a qualifying long-term contract. This chapter shall not be construed to enlarge or alter in any way any purchaser's obligations under any gas purchase contract.

In marketing consenting non-operator's share of gas under a short-term contract, operator shall market the gas of the consenting non-operators upon such terms and conditions as a reasonably prudent operator would market such gas; provided, however, that in fulfilling such obligation, operator shall incur no liability to the consenting non-operator save and except as to acts of willful misconduct or gross negligence. In the event operator intends to market consenting non-operator's share of gas under a short-term contract with an affiliate or subsidiary of operator, operator shall so notify the consenting non-operators.

(d) Any consenting non-operator shall have the right to become a nonconsenting non-operator by delivering to operator a written notice thereof at least sixty (60) days prior to any yearly anniversary of the date that the operator filed the initial test results with the Board. Such an election shall become effective on the later to occur of: (i) the next anniversary of the date that the operator filed the initial test results with the Board, or (ii) the expiration date of the gas purchase agreement then covering the consenting non-operator's share of gas. Operator shall thereafter have no further obligation to market the gas owned by any consenting non-operator electing to become a nonconsenting non-operator. Operator shall furnish to the Board a notice identifying any consenting non-operator who has elected to become a nonconsenting non-operator.

(e) Should a change of operator occur with respect to a well which is subject to this chapter, the successor operator shall furnish to all consenting non-operators within thirty (30) days after assuming operations of such well a notice of change of operator.

Any consenting non-operator shall have the right to become a nonconsenting non-operator by furnishing to the successor operator a written notice advising the successor operator of same within thirty (30) days after the operator places in the United States mail, postage prepaid, the notice required by this subsection (e), with such consenting non-operator to become a nonconsenting non-operator effective on the later to occur of (i) the expiration date of the gas purchase agreement then covering such consenting non-operator's share of gas, or (ii) the first day of the second month after the date of the consenting non-operator's written notice to the successor operator. Operator shall send a notice to the Board identifying any consenting non-operators who have elected to become nonconsenting non-operators.

As to the remaining consenting non-operators, the successor operator shall market the gas of such consenting non-operators in accordance with the terms and provisions of this chapter.

(f) The net proceeds from the sale of the consenting non-operator's share of gas production shall be paid by the buyer to the operator. The operator shall not be responsible for the payment of any taxes or encumbrances with respect to the net proceeds except as specifically provided herein. The operator shall pay, for and on behalf of itself and the consenting non-operators, any severance, privilege and/or maintenance taxes due on the production of gas marketed by the operator. Save and except as otherwise provided in this chapter, or by law, the net proceeds derived from the first sale of the consenting non-operator's share of gas shall be paid by the operator to the consenting non-operators within one hundred twenty (120) days after the date of receipt by the operator of the net proceeds derived for such first sale of production, and thereafter no later than sixty (60) days after the date of receipt by the operator of the net proceeds for subsequent production of the consenting non-operator's share of gas. Save and except as provided by Section 53-3-7, Mississippi Code of 1972, the consenting non-operators shall be and shall remain responsible for the payment of any proceeds due any royalty, overriding royalty and/or production payment which burden and/or encumber the interest of such consenting non-operators, and the operator shall have no liability to any owner of royalty, overriding royalty and/or production payment which burdens and/or encumbers the interest of the non-operators where the operator pays the net proceeds derived from the sale of the consenting non-operator's share of gas as herein provided. The operator and the consenting non-operators shall have no liability to any owner of royalty, overriding royalty and/or production payment which burdens and/or encumbers the interest of the nonconsenting non-operators.

(g) A non-operator's rights under this chapter shall not be affected by his status as a consenting or nonconsenting owner under Section 53-3-7, Mississippi Code of 1972; provided, however, during any period of the recovery of cost or alternate charges, the share of production from the pooled unit well attributable to the nonconsenting owner's nonconsenting interests therein shall be delivered to his purchaser or market, if any, with the proceeds received therefrom to be paid by the purchaser to the operator for the account of the operator and the appropriate consenting owners; if, however, the nonconsenting owner does not have a purchaser or market which is taking the production, then such share of production shall be sold by the operator to the operator's purchaser or market, with the proceeds received therefrom to be paid by the purchaser to the operator for the account of the operator and the appropriate consenting owners.

SOURCES: Laws, 1991, ch. 490, § 5, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed "Section 75-58-9(a)" to "subsection (a) of this section" in subsection (b), changed "Section 75-58-9(b)" to "subsection (b) of this section" in subsection (c), and changed "Section 75-58-9(e)" to "this subsection (e)" in the second paragraph of subsection (e). The Joint Committee ratified the correction at its July 22, 2010, meeting.

CHAPTER 60

Proprietary Schools and Colleges

§ 75-60-1. Title.

Cross References — Proprietary schools and colleges subject to regulation under §§ 75-60-1 et seq. are not subject to the authority of the Commission on College Accreditation, see § 37-101-241.

§ 75-60-3. Definitions.

As used in this chapter:

(a) "Course of instruction" means the offering of instruction to individuals for a charge, fee or contribution of any kind, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical or industrial occupation.

(b) "Program of study" means a series of individual courses in an area of specialization for which a diploma, degree, certificate or other written evidence of proficiency or achievement is offered.

(c) "Agent" means any person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, who either directly or indirectly influences the decision of any prospective student to enroll for a fee in a course of instruction.

(d) "Person" means an individual, corporation, partnership, association or any other type of organization.

(e) "Board" means the Mississippi Community College Board established in Section 37-4-3 et seq., Mississippi Code of 1972.

(f) "Commission" means the Commission on Proprietary School and College Registration established under this chapter.

(g) "Correspondence education" means a formal educational process under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student; courses are typically self-paced.

(h) "Distance education" means a formal educational process in which the majority of the instruction (interaction between students and instructors and among students) in a course occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous. A distance education course may use the Internet; one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices; audio conferencing; or video cassettes, DVDs and CD-ROMs if used as part of the distance learning course or program.

(i) "General education course" means a unit of learning that is nontechnical in nature and is a fundamental part of a program. The content is drawn from oral and written communications, social studies, mathematics, natural sciences and the humanities.

(j) "Nontechnical course" means a unit of learning that is nontechnical in nature and includes general education courses, basic/college life skills and other related courses.

(k) "Occupational degree" means a credential awarded by a school upon successful completion of an associate degree program. This program shall contain a minimum of sixty percent (60%) technical course credits/clock hours.

(*l*) "Institution" means a proprietary school, career college, school person or other organization that offers programs that require registration in accordance with Section 75-60-5.

(m) "Technical course" means a unit of learning that yields skills, knowledge and understanding essential to the specific occupation for which the program is designed.

SOURCES: Codes, 1942, § 6688-02; Laws, 1972, ch. 507, § 2; Laws, 1974, ch. 441, § 2; Laws, 1992, ch. 349, § 2; Laws, 1993, ch. 446, § 1; Laws, 2013, ch. 333, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment rewrote (b), which read "'Program of study' means a curriculum or set of individual courses in a particular area of specialization for which a diploma, degree, certificate or other written evidence of proficiency of achievement is offered or awarded"; rewrote (c), which read "'Agent' means any individual who solicits prospective students in Mississippi to enroll for a fee in a course of instruction"; substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (e); and added (g) through (m).

§ 75-60-4. Commission on Proprietary School and College Registration; staffing; purpose of commission; levying and collection of fees.

(1) The Mississippi Community College Board shall appoint a "Commission on Proprietary School and College Registration" to be composed of five (5) qualified members, one (1) appointed from each of the five (5) Mississippi congressional districts existing on January 1, 1992. The membership of said commission shall be composed of persons who have held a teaching, managerial or other similar position with any public, private, trade, technical or other school; provided, however, that one (1) member of the commission shall be actively engaged in, or retired from, teaching, managerial or other similar position with a privately owned trade, technical or other school. The membership of said commission shall be appointed by the board within ninety (90) days of the passage of this chapter. In making the first appointments, two (2) members shall be appointed for three (3) years, two (2) members for four (4) years, and one (1) member for five (5) years. Thereafter, all members shall be appointed for a term of five (5) years. If one (1) of the members appointed by the board resigns or is otherwise unable to serve, a new member shall be appointed by the commission to fill the unexpired term. All five (5) members of the commission have full voting rights. The members shall not be paid for their services, but may be compensated for the expenses necessarily incurred in the attendance at meetings or in performing other services for the commission at a rate prescribed under Section 25-3-69, Mississippi Code of 1972, plus actual expenses and mileage as provided by Section 25-3-41, Mississippi Code of 1972. Members of the commission shall annually elect a chairman from among its members who is not actively engaged with a privately owned trade or technical school.

(2) The Mississippi Community College Board shall appoint such staff as may be required for the performance of the commission's duties and provide necessary facilities.

(3) The Mississippi Community College Board shall levy only fees authorized in this chapter only in such amounts as may be required for the performance of the commission's duties.

(4) In addition to the fees authorized in this chapter, the Mississippi Community College Board is authorized to levy and collect fees from proprietary schools and colleges (a) to recover the cost of audits, investigations and hearings relating to such institutions, and (b) to recover the cost of activities conducted under Section 73-15-25 relating to the accreditation of practical nursing programs.

(5) It shall be the purpose of the Commission on Proprietary School and College Registration to establish and implement the registration program as provided in this chapter. All controversies involving the registration of such schools shall be initially heard by a duly authorized hearing officer of the commission before whom a complete record shall be made. After the conclusion of the hearing, the duly authorized hearing officer of the commission shall

make a recommendation to the commission as to the resolution of the controversies, and the commission, after considering the transcribed record and the recommendation of its hearing officer, shall make its decision which becomes final unless the school or college or other person involved shall appeal to the Mississippi Community College Board, which appeal shall be on the record previously made before the commission's hearing officer except as may be provided by rules and regulations adopted by the Mississippi Community College Board. All appeals from the Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Laws, 1992, ch. 349, § 3; Laws, 1993, ch. 446, § 2; Laws, 2011, ch. 478, § 1; Laws, 2013, ch. 333, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment added (3) and (4); and redesignated former (3) as present (5).

The 2013 amendment, in (1), inserted "or retired from" in the second sentence, and added "who is not actively engaged with a privately owned trade or technical school" at the end of the last sentence; and substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" throughout the section.

§ 75-60-5. Exemption of certain courses and institutions.

The provisions of this chapter do not apply to the following categories of courses, schools or colleges:

(a) Tuition-free courses or schools conducted by employers exclusively for their own employees;

(b) Schools, colleges, technical institutes, community colleges, junior colleges or universities under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board;

(c) Schools or courses of instruction under the jurisdiction of the State Board of Cosmetology, State Board of Barber Examiners, the State Board of Massage Therapy or the State Board of Nursing;

(d) Courses of instruction required by law to be approved or licensed, or given by institutions approved or licensed, by a state board or agency other than the Commission on Proprietary School and College Registration; however, a school so approved or licensed may apply to the Commission on Proprietary School and College Registration for a certificate of registration to be issued in accordance with the provisions of this chapter;

(e) Correspondence education;

(f) Nonprofit private schools offering academic credits at primary or secondary levels, or conducting classes for exceptional education as defined by regulations of the State Department of Education;

(g) Private nonprofit colleges and universities or any private school offering academic credits at primary, secondary or postsecondary levels;

(h) Courses of instruction conducted by a public school district or a combination of public school districts;

(i) Courses of instruction conducted outside the United States;

(j) A school that offers only instruction in subjects that the Commission on Proprietary School and College Registration determines are primarily for a vocational, personal improvement or cultural purposes and that does not represent to the public that its course of study or instruction will or may produce income for those who take that study or instruction;

(k) Courses conducted primarily on an individual tutorial basis, where not more than one (1) student is involved at any one time, except in those instances where the Commission on Proprietary School and College Registration determines that the course is for the purpose of preparing for a vocational objective;

(*l*) Kindergartens or similar programs for preschool-age children.

SOURCES: Codes, 1942, § 6688-03; Laws, 1972, ch. 507, § 3; Laws, 1974, ch. 441, § 3; Laws, 1976, ch. 319; Laws, 1986, ch. 432, § 5; Laws, 1992, ch. 349, § 4; Laws, 1993, ch. 446, § 3; Laws, 1998, ch. 334, § 1; Laws, 2004, ch. 476, § 21; Laws, 2010, ch. 507, § 1; Laws, 2013, ch. 333, § 3, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The "(1)" designation was deleted at the beginning of the section. The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a grammatical error in subsection (2) was corrected by substituting "any state statute that contradicts those federal standards is not applicable" for "any state statute that contradicts those federal standards are not applicable."

Amendment Notes — The 2010 amendment added the (1) designation and (2).

The 2013 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" at the end of (b); added "or the State Board of Nursing" at the end of (c); substituted "education" for "courses" in (e); and deleted former (2), which read: "Nationally accredited schools shall follow accreditation standards for hiring and training faculty and any state statute that contradicts those federal standards is not applicable to nationally accredited schools. All other schools must comply fully with the applicable state statutes."

§ 75-60-11. Issuance of certificate of registration; registration number.

(1) The Commission on Proprietary School and College Registration shall issue a certificate of registration to an applicant of good reputation, offering one or more courses of instruction upon determining that the applicant has the facilities, resources and faculty to provide students with the kind of instruction that it proposes to offer. A certificate of registration shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not completed its determination with respect to the issuance of the certificate of registration within such sixty-day period, it shall issue a temporary certificate to the applicant, which certificate is sufficient to meet the requirements of Section 75-60-13 until such time as

determination is made. Any certificate issued by the commission is valid only for the institution and courses for which it is issued and does not cover other schools or branches operated by the owner. A certificate of registration is valid for two (2) years unless earlier revoked for cause by the commission. The commission shall adopt rules and regulations for administration of the registration process. The commission may cause an investigation to be made into the correctness of the information submitted in any application for registration. If the commission believes that false, misleading or incomplete information has been submitted to it in connection with any application for registration, the commission shall conduct a hearing on the matter and may withhold a certificate of registration upon finding that the applicant has failed to meet the standards for such certificate or has submitted false, misleading or incomplete information to the commission. Application for a certificate of registration shall be made in writing to the commission on forms furnished by the commission. A certificate of registration is not transferable and shall be prominently displayed on the premises of an institution.

(2) The commission shall assign registration numbers to all schools registered with it. Schools shall display their registration numbers on all school publications and on all advertisements bearing the name of the school.

SOURCES: Codes, 1942, § 6688-05; Laws, 1972, ch. 507, § 5; Laws, 1986, ch. 432, § 8; Laws, 1992, ch. 349, § 7; Laws, 1993, ch. 446, § 4; Laws, 2011, ch. 371, § 3; Laws, 2013, ch. 333, § 4, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment added (2); and redesignated former (2) as present (3).

The 2013 amendment deleted former (2), which read: "Private business and vocational schools that have obtained national accreditation from an accrediting agency designated by the United States Department of Education may submit evidence of current accreditation in lieu of other application requests. Applications submitted on evidence of national accreditation must be approved or denied within thirty (30) days after receipt. If no action is taken within thirty (30) days, the application shall be deemed approved and a certificate of registration must be issued"; and redesignated former (3) as present (2).

§ 75-60-15. Certificate of registration; fees; registration of new course offerings; school franchises.

(1) An initial application fee shall accompany each application for certificate of registration, and a renewal fee shall accompany each application for renewal of registration.

(2) If a renewal fee is not paid at least thirty (30) days prior to the expiration of a school's certificate of registration, in addition to the renewal fee, there shall be a delinquent fee collected. No portion of any license fee shall be subject to refund.

(3) A certificate of registration shall be issued or denied within sixty (60) days after receipt of the application by the commission.

(4) No new program of study shall be offered by any school holding a certificate of registration until it is registered with and approved by the

commission in accordance with procedures which shall be established by the commission. After such course is registered in accordance with the approval procedures provided for herein, it shall be included as a part of any renewal of a certificate of registration. Each application for the original registration of a new program registration fee to be determined by the commission.

(5) A certificate of registration shall be valid only for the school and courses for which it is issued and shall not include other schools or additional locations of a school unless each such additional location (a) offers only courses which are identical to courses offered at the registered location and (b) is under the same ownership, management and control as that of the registered location except as may be provided otherwise in this section. Such additional locations meeting such requirements shall be identified as "annexes" on a certificate application. Gross tuition revenues for the registered location and all annexes shall be combined for the purpose of determining fees payable under this section.

(6) The fees submitted with applications for initial or renewal of registration are not returnable to the applicant, even though a certificate of registration is not issued, unless the Commission on Proprietary School and College Registration determines that a financial hardship will result.

(7) The amount of fees authorized in this section and in Section 75-60-27 shall be determined by the State Board for Community and Junior Colleges after receiving recommendations from the commission.

SOURCES: Codes, 1942, § 6688-08; Laws, 1972, ch. 507, § 8; Laws, 1992, ch. 349, § 9; Laws, 1993, ch. 446, § 5; Laws, 1998, ch. 334, § 2; Laws, 1999, ch. 389, § 1; Laws, 2011, ch. 478, § 2, eff from and after July 1, 2011.

Editor's Note — Section 37-4-5 provides that the term State Board for Community and Junior Colleges, whenever it appears in the laws of the state, means Mississippi Community College Board.

Amendment Notes — The 2011 amendment rewrote (1), (2) and (6); rewrote the last sentence of (4); and added (7).

§ 75-60-17. Surety bond or deposit for certificate of registration.

The application for a certificate of registration shall be accompanied by a surety bond with conditions and in a form prescribed by the Commission on Proprietary School and College Registration with at least one (1) corporate bonding company approved by the Department of Insurance as surety thereon. The bond shall provide for the indemnification of any person suffering loss as the result of any false certification, school closure, any fraud or misrepresentation used in behalf of the principal in procuring such person's enrollment in a course of instruction, including repayment of tuition paid in advance by any student. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The bond shall provide blanket coverage for the acts of all persons engaged as agents of

the school without naming them and without regard to the time they are engaged during the term of the bond.

The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Commission on Proprietary School and College Registration, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person subject to this chapter required to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds of the same dollar value as the prescribed bond. Said deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

SOURCES: Codes, 1942, § 6688-09; Laws, 1972, ch. 507, § 9; Laws, 1986, ch. 432, § 10; Laws, 1992, ch. 349, § 10; Laws, 1998, ch. 334, § 3; Laws, 2011, ch. 478, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment, in the first paragraph, deleted "in the penal sum of Fifty Thousand Dollars ($50,000.00)" preceding "with conditions and in a form prescribed" in the first sentence, and deleted the former third sentence which read: "The liability of the surety on such bond for the school covered shall not exceed the sum of Fifty Thousand Dollars ($50,000.00) as an aggregate for all students for all breaches of the conditions of the bond by the school"; and rewrote the fourth sentence of the second paragraph.

§ 75-60-19. Suspension, revocation or cancellation of certificate of registration; complaints; investigations; hearing procedures; subpoenas; decision after hearing; civil penalties and administrative sanctions; appeals.

(1) The Commission on Proprietary School and College Registration may suspend, revoke or cancel a certificate of registration for any one (1) or any combination of the following causes:

(a) Violation of any provision of the sections of this chapter or any regulation made by the commission;

(b) The furnishing of false, misleading or incomplete information requested by the commission;

(c) The signing of an application or the holding of a certificate of registration by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of any other indictable offense;

(d) The signing of an application or the holding of a certificate of registration by a person who is addicted to the use of any narcotic drug, or who is found to be mentally incompetent;

(e) Violation of any commitment made in an application for a certificate of registration;

(f) Presentation to prospective students of misleading, false or fraudulent information relating to the course of instruction, employment opportunity, or opportunities for enrollment in accredited institutions of higher education after entering or completing courses offered by the holder of a certificate of registration;

(g) Failure to provide or maintain premises or equipment for offering courses of instruction in a safe and sanitary condition;

(h) Refusal by an agent to display his agent permit upon demand of a prospective student or other interested person;

(i) Failure to maintain financial resources adequate for the satisfactory conduct of courses of study as presented in the plan of operation or to retain a sufficient number and qualified staff of instruction; however nothing in this chapter shall require an instructor to be certificated by the Commission on Proprietary School and College Registration or to hold any type of post-high school degree;

(j) Offering training or courses of instruction other than those presented in the application; however, schools may offer special courses adapted to the needs of individual students where the special courses are in the subject field specified in the application;

(k) Accepting the services of an agent not licensed in accordance with Sections 75-60-23 through 75-60-37, inclusive;

(*l*) Conviction or a plea of nolo contendere on the part of any owner, operator or director of a registered school of any felony under Mississippi law or the law of another jurisdiction;

(m) Continued employment of a teacher or instructor who has been convicted of or entered a plea of nolo contendere to any felony under Mississippi law or the law of another jurisdiction;

(n) Incompetence of any owner or operator to operate a school.

(2)(a) Any person who believes he has been aggrieved by a violation of this section shall have the right to file a written complaint within two (2) years of the alleged violation. The commission shall maintain a written record of each complaint that is made. The commission shall also send to the complainant a form acknowledging the complaint and requesting further information if necessary and shall advise the director of the school that a complaint has been made and, where appropriate, the nature of the complaint.

(b) The commission shall within twenty (20) days of receipt of such written complaint commence an investigation of the alleged violation and shall, within ninety (90) days of the receipt of such written complaint, issue a written finding. The commission shall furnish such findings to the person who filed the complaint and to the chief operating officer of the school cited

in the complaint. If the commission finds that there has been a violation of this section, the commission shall take appropriate action.

(c) Schools shall disclose in writing to all prospective and current students their right to file a complaint with the commission.

(d) The existence of an arbitration clause in no way negates the student's right to file a complaint with the commission.

(e) The commission may initiate an investigation without a complaint.

(3) **Hearing procedures.** — (a) Upon a finding that there is good cause to believe that a school, or an officer, agent, employee, partner or teacher, has committed a violation of subsection (1) of this section, the commission shall initiate proceedings by serving a notice of hearing upon each and every such party subject to the administrative action. The school or such party shall be given reasonable notice of hearing, including the time, place and nature of the hearing and a statement sufficiently particular to give notice of the transactions or occurrences intended to be proved, the material elements of each cause of action and the civil penalties and/or administrative sanctions sought.

(b) Opportunity shall be afforded to the party to respond and present evidence and argument on the issues involved in the hearing including the right of cross-examination. In a hearing, the school or such party shall be accorded the right to have its representative appear in person or by or with counsel or other representative. Disposition may be made in any hearing by stipulation, agreed settlement, consent order, default or other informal method.

(c) The commission shall designate an impartial hearing officer to conduct the hearing, who shall be empowered to:

(i) Administer oaths and affirmations; and

(ii) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents; and

(iii) Direct the school or such party to appear and confer to consider the simplification of the issues by consent; and

(iv) Grant a request for an adjournment of the hearing only upon good cause shown.

The strict legal rules of evidence shall not apply, but the decision shall be supported by substantial evidence in the record.

(4) The commission, acting by and through its hearing officer, is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the commission shall extend to all parts of the state and shall be served by any person designated by the commission for such service. Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(5) **Decision after hearing.** — The hearing officer shall make written findings of fact and conclusions of law, and shall also recommend in writing to the commission a final decision, including penalties. The hearing officer shall mail a copy of his findings of fact, conclusions of law and recommended penalty to the party and his attorney, or representative. The commission shall make the final decision, which shall be based exclusively on evidence and other materials introduced at the hearing. If it is determined that a party has committed a violation, the commission shall issue a final order and shall impose penalties in accordance with this section. The commission shall send by certified mail, return receipt requested, a copy of the final order to the party and his attorney, or representative. The commission shall, at the request of the school or such party, furnish a copy of the transcript or any part thereof upon payment of the cost thereof.

(6) **Civil penalties and administrative sanctions.** — (a) A hearing officer may recommend, and the commission may impose, a civil penalty not to exceed Two Thousand Five Hundred Dollars ($2,500.00) for any violation of this section. In the case of a second or further violation committed within the previous five (5) years, the liability shall be a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each such violation.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a hearing officer may recommend and the commission may impose a civil penalty not to exceed Twenty-five Thousand Dollars ($25,000.00) for any of the following violations: (i) operation of a school without a registration in violation of this chapter; (ii) operation of a school knowing that the school's registration has been suspended or revoked; (iii) use of false, misleading, deceptive or fraudulent advertising; (iv) employment of recruiters on the basis of a commission, bonus or quota, except as authorized by the commission; (v) directing or authorizing recruiters to offer guarantees of jobs upon completion of a course; (vi) failure to make a tuition refund when such failure is part of a pattern of misconduct; or (vii) violation of any other provision of this chapter, or any rule or regulation promulgated pursuant thereto, when such violation constitutes part of a pattern of misconduct which significantly impairs the educational quality of the program or programs being offered by the school. For each enumerated offense, a second or further violation committed within the previous five (5) years shall be subject to a civil penalty not to exceed Fifty Thousand Dollars ($50,000.00) for each such violation.

(c) In addition to the penalties authorized in paragraphs (a) and (b) of this subsection, a hearing officer may recommend and the commission may impose any of the following administrative sanctions: (i) a cease and desist order; (ii) a mandatory direction; (iii) a suspension or revocation of a certificate of registration; (iv) a probation order; or (v) an order of restitution.

(d) The commission may suspend a registration upon the failure of a school to pay any fee, fine or penalty as required by this chapter unless such failure is determined by the commission to be for good cause.

(e) All civil penalties, fines and settlements received shall accrue to the credit of the Commission on Proprietary School and College Registration.

(7) Any penalty or administrative sanction imposed by the commission under this section may be appealed by the school, college or other person affected to the Mississippi Community College Board as provided in Section 75-60-4(3), which appeal shall be on the record previously made before the commission's hearing officer. All appeals from the Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SOURCES: Codes, 1942, § 6688-10; Laws, 1972, ch. 507, § 10; Laws, 1986, ch. 432, § 11; Laws, 1992, ch. 349, § 12; Laws, 2011, ch. 478, § 4; Laws, 2013, ch. 333, § 5, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment substituted "agent permit" for "agent's certificate of registration" in (1)(h); and substituted "Commission on Proprietary School and College Registration" for "State General fund" in (6)(e).

The 2013 amendment added (2)(c) and (d); redesignated former (2)(c) as (2)(e); and substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" twice in (7).

§ 75-60-23. Agent permit required.

No person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, shall directly or indirectly influence the decision of any prospective student to enroll for a fee in a course of instruction without first securing a permit as an agent from the Commission on Proprietary School and College Registration. If the person represents more than one (1) institution, a separate permit shall be obtained for each institution represented. Agent permits shall only be issued to agents of institutions that hold a certificate of registration issued by the commission.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1986, ch. 432, § 13; Laws, 1992, ch. 349, § 14; Laws, 1993, ch. 446, § 7; Laws, 2011, ch. 478, § 5; Laws, 2013, ch. 333, § 6, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment made a minor stylistic change.

The 2013 amendment rewrote the section, which read "No person shall sell any course of instruction or solicit students therefor in this state unless he first secures a permit as an agent from the Commission on Proprietary School and College Registration. If the agent represents more than one (1) school, a separate permit shall be obtained for each school represented by him. Agent permits shall only be issued to agents of schools that hold a certificate of registration for the State of Mississippi."

§ 75-60-25. Issuance of agent permit.

The application for an agent permit shall be made on forms to be furnished by the Commission on Proprietary School and College Registration. Any agent permit applied for shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not completed its determination with respect to the issuance of an agent

permit within such sixty-day period, it shall issue a temporary agent permit to the applicant, which permit is sufficient to meet the requirements of Section 75-60-23 until such time as such determination is made. Upon approval for an agent permit, the commission shall issue a pocket card to the person, giving his name, agent permit number and the name and campus location of his employing school, and certifying that the person whose name appears on the card is an authorized agent of the school. An agent permit is valid for one (1) year from the date on which it was issued.

SOURCES: Codes, 1942, §§ 6688-11, 6688-12; Laws, 1972, ch. 507, §§ 11, 12; Laws, 1986, ch. 432, § 14; Laws, 1992, ch. 349, § 15; Laws, 1993, ch. 446, § 8; Laws, 2011, ch. 478, § 6; Laws, 2013, ch. 333, § 7, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment substituted "agent pemit" for "agent's permit" near the beginning of the second sentence; inserted "agent" preceding "permit" everywhere else it appears in the section; and made minor stylistic changes.

The 2013 amendment, in the next-to-last sentence, deleted "address" following "giving his name" and substituted "campus location" for "address" preceding "of his employing school."

§ 75-60-27. Agent permit fees.

The application for an agent permit and an application for renewal thereof shall be accompanied by fees determined by the State Board for Community and Junior Colleges. All fees collected for the issuance or renewal of agent permits shall be deposited in the State Treasury to the credit of the Commission on Proprietary School and College Registration.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1992, ch. 349, § 16; Laws, 2011, ch. 478, § 7, eff from and after July 1, 2011.

Editor's Note — Section 37-4-5 provides that the term State Board for Community and Junior Colleges, whenever it appears in the laws of the state, means Mississippi Community College Board.

Amendment Notes — The 2011 amendment rewrote the section.

§ 75-60-29. Surety bond for agent permit.

The application for an agent permit shall be accompanied by a surety bond acceptable to the Commission on Proprietary School and College Registration. Such bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment, and may be supplied by an agent of a school or by the school itself as a blanket bond covering each of its agents. The surety of any such bond may cancel the same upon giving thirty (30) days' notice in writing to the commission and is relieved of liability for any breach of condition occurring after the effective date of said cancellation. An application for renewal shall be accompanied by a surety bond, as provided in this section, if a continuous bond has not been furnished.

SOURCES: Codes, 1942, § 6688-11; Laws, 1972, ch. 507, § 11; Laws, 1986, ch. 432, § 15; Laws, 1992, ch. 349, § 17; Laws, 2011, ch. 478, § 8, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment, in the first sentence, inserted "an agent" preceding "permit" and deleted "in the penal sum of Ten Thousand Dollars ($10,000.00)" from the end; deleted "in the amount of Ten Thousand Dollars ($10,000.00). The liability of the surety on such bond for each agent covered shall not exceed the sum of Ten Thousand Dollars ($10,000.00) as an aggregate for all students for all breaches of the conditions of the bond by such agents" which was the former end of the second sentence and third sentence; and made a minor stylistic change.

§ 75-60-31. Good moral character prerequisite to issuance of agent permit.

No agent permit shall be issued pursuant to Section 75-60-25 to any person found by the Commission on Proprietary School and College Registration not to be of good moral character.

SOURCES: Codes, 1942, § 6688-16; Laws, 1972, ch. 507, § 16; Laws, 1986, ch. 432, § 16; Laws, 1992, ch. 349, § 18; Laws, 2011, ch. 478, § 9, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted "agent" preceding "permit" near the beginning of the section.

§ 75-60-33. Revocation of agent permit.

Any agent permit issued may be revoked by the Commission on Proprietary School and College Registration if the holder of the permit solicits or enrolls students through fraud, deception or misrepresentation, or upon a finding that the permit holder is not of good moral character.

The Commission on Proprietary School and College Registration shall hold informal conferences pursuant to Section 75-60-19 with an agent believed to be in violation of one or more of the above conditions. If these conferences fail to eliminate the agent's objectionable practices or procedures, the commission shall hold a public hearing. A record of such proceedings shall be taken and appeals to the commission shall be upon such record, except as may be provided by rules and regulations to be adopted by the commission. Nothing said or done in the informal conferences shall be disclosed by the staff of the commission nor be used as evidence in any subsequent proceedings.

SOURCES: Codes, 1942, § 6688-13; Laws, 1972, ch. 507, § 13; Laws, 1986, ch. 432, § 17; Laws, 1992, ch. 349, § 19; Laws, 2011, ch. 478, § 10, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted "agent" preceding "permit" near the beginning of the first paragraph.

§ 75-60-35. Existence of surety bond not to impair other right of recovery; recovery on contract barred if agent not holder of agent permit.

The fact that a bond is in force pursuant to Section 75-60-29 does not limit nor impair any right of recovery otherwise available pursuant to law, nor is the amount of such bond relevant in determining the amount of damages or other relief to which any plaintiff may be entitled.

No recovery shall be had on any contract for or in connection with a course of instruction by any person selling or administering such course if the agent of such person was not the holder of an agent permit as required by Section 75-60-23 at the time he negotiated the contract for or sold such course.

SOURCES: Codes, 1942, § 6688-14; Laws, 1972, ch. 507, § 14; brought forward, Laws, 1992, ch. 349, § 20; Laws, 2011, ch. 478, § 11, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "agent permit" for "agent's permit" in the last paragraph.

§ 75-60-37. Agent permit not to constitute approval of any program of instruction.

The issuance of an agent permit pursuant to Section 75-60-25 does not constitute approval of any program of instruction or the person or institution offering, conducting or otherwise administering the same, unless licensed by the Commission on Proprietary School and College Registration. Any representation contrary to this section or tending to imply that an agent permit issued pursuant to Section 75-60-25 constitutes such approval is misrepresentation within the meaning of the provisions of this chapter.

SOURCES: Codes, 1942, § 6688-15; Laws, 1972, ch. 507, § 15; Laws, 1986, ch. 432, § 18; Laws, 1992, ch. 349, § 21; Laws, 2011, ch. 478, § 12, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted "an agent" preceding "permit" in the first and last sentences; and substituted "program" for "course" in the first sentence.

§ 75-60-45. Review and evaluation of qualifications of instructors; minimum qualifications for instructors.

The commission shall not appoint instructors, but the commission may review and evaluate whether an instructor is qualified to teach a program of study as follows:

(1) Academic classes. Classroom instructors teaching general education courses shall hold at least a bachelor's degree with appropriate coursework in the teaching discipline from an accredited institution and one (1) of the following:

(a) A minimum of eighteen (18) semester hours of credit from an accredited institution in the subject area being taught; or

(b) A minimum of twelve (12) semester hours in methods and techniques of teaching.

(2) Technical classes. Classroom instructors teaching technical courses shall have at least a high-school diploma or an equivalent diploma and at least one (1) of the following:

(a) A degree, certificate or license in the subject area or a related field;

(b) A minimum of eighteen (18) semester hours of credit in mathematics, science or courses related to the subject area from an accredited institution; or

(c) A minimum of three (3) years' work experience in the technical area or a related field.

(3) Apprenticeship trade classes. Instructors of apprenticeship trades shall have the following qualifications and training:

(a) At least a high-school diploma or an equivalent diploma;

(b) A minimum of three (3) years' work experience above the students' level in the trade to be taught; and

(c) Recognized standing as a tradesman or specialist supported by evidence from previous employers.

SOURCES: Laws, 2013, ch. 333, § 8, eff from and after July 1, 2013.

CHAPTER 63

Sales of Cemetery Merchandise and Funeral Services

Article 3.

Preneed Cemetery and Funeral Registration.

§ 75-63-51. Short title.

Cross References — Applicability of §§ 75-63-1 through 75-63-75 to the sale of preneed contracts for caskets, see § 73-11-67.

§ 75-63-53. Definitions.

As used in this article, unless the context requires otherwise:

(a) "Buyer" means the person who purchases the preneed contract.

(b) "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) "Cemetery" means an organization as defined in Section 41-43-33.

(d) "Contract insured" or "contract owner" means the person upon whose death will initiate the performance of a preneed contract.

(e) "Contract provider" means the funeral home, cemetery or other providers of merchandise and/or service in a preneed contract that will be responsible for performing a preneed contract.

(f) "Crematory" means an organization as defined in Section 73-11-41.

(g) "Financial institution" means a bank, trust company, savings bank, or savings and loan association chartered or authorized to do business in this state.

(h) "Funeral home" means a business licensed under Section 73-11-55.

(i) "Inflation proof contract" means a preneed contract that establishes a fixed price for funeral services and merchandise without regard to future price increases.

(j) "Insurance" means a life insurance policy, an annuity policy or a Class A or Class B burial insurance policy.

(k) "Merchandise" means personal property associated with the disposal of or memorializing a deceased human being, including, but not limited to, a casket, burial vault, burial clothes, urn or monument.

(*l*) "Preneed contract" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of but shall not mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

(m) "Preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

(n) "Seller" means the person who sells a preneed contract.

(o) "Services" means services of any nature in connection with the final disposition of a dead human body.

(p) "Standard contract" means a preneed contract that applies the trust funds or insurance proceeds to the purchase price of specific funeral services and specific merchandise at the time of death of the contract insured without a guarantee against future price increases.

(q) "Substitute provider" means any funeral home, cemetery, or other provider of merchandise and/or services who furnishes final needs to a beneficiary of a preneed contract sold by another provider regardless of whether the substitute provider honors the terms and conditions of the original preneed contract.

(r) "Trust" means an express trust created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named preneed contract insured.

(s) "Trustee" or "trust officer" means an original, added or successor trustee including its successor by merger or consolidation.

(t) "Trust documents" means documents, including, but not limited to, preneed contracts, receipts, contract owner's death certificate, proof of death, the trust agreement, and any and all correspondence between the trustee or trust institution and the contract provider or contract insured.

SOURCES: Laws, 2001, ch. 513, § 2; Laws, 2006, ch. 448, § 1; Laws, 2009, ch. 549, § 1; Laws, 2010, ch. 407, § 2; Laws, 2012, ch. 308, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment added (m) and renumbered the remaining subsections accordingly.

The 2012 amendment added (q) and renumbered the remaining subsections accordingly.

§ 75-63-55. Preneed contracts to be evidenced in writing on forms approved by and on file with Secretary of State; contracts in violation of article and chapter; contents of written preneed contract; contract to be funded by trust or insurance.

(1) No person, firm, partnership, association or corporation may directly or indirectly, or through an agent, engage in the sale of preneed contracts or preneed contracts for caskets except as authorized under this article. Any person, establishment or company required to register under Section 73-11-67 that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of this article that are applicable to preneed contracts. All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form may be used without prior approval of the Secretary of State. No amendment or modification can be made to any preneed contract without prior approval of the Secretary of State. The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of

State, shall be a violation of the chapter and subject to the penalties provided in Section 75-63-69. The contract shall clearly indicate the names and addresses of the buyer, contract insured, contract provider and seller. The Secretary of State may by rule or regulation prescribe specific contract content or a standard contract form required for use by all contract providers describing the rights and responsibilities of the contract provider and the contract owner. However, no standard form contract or contract language shall be inconsistent in any way with the provisions of this article. The Secretary of State is further authorized to implement a systematic method to identify and track preneed contract sales for the purpose of reconciling sales reported to the Secretary of State on the annual report required by Section 75-63-67 with trust fund activity statements and the provider's business records.

(2) The contract shall clearly indicate all merchandise covered by the contract, a description of the merchandise quality, and the total cost of all merchandise covered by the contract. The contract shall list all services covered by the contract and the total cost for all services covered by the contract. The contract shall list all cash advance items covered by the contract and the total cost for all cash advance items covered by the contract.

(3) All preneed contracts sold shall be funded by trust or insurance as defined in this article or evidenced by a warehouse receipt, as contemplated in Uniform Commercial Code-Documents of Title, Section 75-7-101 et seq. All merchandise placed on a warehouse receipt or placed in storage shall be reported to the Secretary of State in the preneed report as required by Section 75-63-67.

(4) If the preneed contract is funded by a policy of insurance, as defined by Section 83-5-5, a copy of the insurance policy shall be furnished to the insured within fifteen (15) days of issue. Such insurance shall be subject to the insurance laws of the state.

The insured shall be furnished the following:

(a) A list of the merchandise, including a description of the merchandise quality, and services which are applied or contracted for in the preneed contract and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(b) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the preneed contract; and

(c) Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the preneed guarantees.

If the preneed contract is not funded by a policy of insurance, as defined by Section 83-5-5, a copy of the preneed contract shall be furnished to the contract insured at the time of purchase.

(5) If the preneed contract is funded by trust, the contract shall indicate the name, address and telephone number of the trustee; the trust institution;

the amount to be paid; the frequency of payment; and the length of time payments will be paid into the trust. The contract insured must initial on the contract the percentage required to be trusted and the designation of the trust officer. In addition, the contract should clearly indicate any exclusions or limitations of the preneed contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.

(6) The preneed contract shall indicate whether it is a standard contract or an inflation proof contract. The contract shall clearly indicate which merchandise and services are guaranteed as to price.

(7) The preneed contract shall contain the address and phone number of the Secretary of State with instructions that consumer complaints may be filed with the Secretary of State.

(8) If the preneed contract is paid in multiple payments, the contract should indicate the amount, frequency and duration of the payments and the amount of any interest charged. The contract shall also include the impact on the contract if payments are not made.

(9) The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of this article and subject to the penalties provided in Section 75-63-69.

SOURCES: Laws, 2001, ch. 513, § 3; Laws, 2008, ch. 550, § 1; Laws, 2009, ch. 549, § 2; Laws, 2010, ch. 407, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), inserted "or preneed contracts for caskets" preceding "except as authorized under this article" in the first sentence and added the second sentence.

§ 75-63-59. Requirements for contract funded by trust.

(1) If the contract is funded by trust, the Secretary of State shall be given a copy of the trust agreement, which the Secretary of State shall review and approve in advance. The Secretary of State may at any time require the submission of the trust agreement for review and approval from any preneed provider. The Secretary of State shall approve in advance any amendments or modifications to the trust agreement. The Secretary of State shall be informed in writing as to how the assets of the trust are held. In the event of any change in the investment composition of the trust assets, or change in the trustee or trust institution, the Secretary of State shall be informed within ten (10) days after the time the change occurs.

(2) Any trustee, other than a financial institution, shall not be the contract provider, the seller, or an officer or director of the contract provider if the contract provider is a corporation.

(3)(a) In no event may trust funds be loaned, directly or indirectly, to any of the following persons: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(b) In no event may trust funds, directly or indirectly, be invested in or with any business or business venture in which any of the following persons have an interest: the preneed provider; any entity in which the preneed provider has any financial interest; any employee, director, member, stockholder, partner, full or partial owner, or principal of the preneed provider; or any person related by blood or marriage to any of those persons.

(4) Not later than the fifth day of the following month from when funds are received, the contract seller shall place in a trust account in a financial institution as defined by this article at least eighty-five percent (85%) of the funds received for funeral services and merchandise. The contract shall disclose to the purchaser in boldface type the percentage of funds the seller is required to trust along with the name of the trust officer, the trust institution, the address and phone number of the same. The purchaser shall initial the corresponding paragraph in the contract indicating notice of the trust percentage and acknowledge being provided the name of the trust officer, the trust institution, address and phone number. The contract seller must provide the trustee with documentation containing the contract owner's identity and allocable share for each remittance. Trust accounts shall be carried in the name of the preneed seller, but accounting records shall be established and maintained for each individual preneed funeral contract beneficiary showing the amounts deposited and invested. The Secretary of State may by rule address the recordkeeping required for interest, dividends, increases and accretions earned.

(5) Reasonable annual trust fees including any income taxes owed to the State of Mississippi and/or the United States Treasury may be withheld from the earnings of the trust.

(6) At the time of death, if the contract provider provides the merchandise and services indicated in the contract, the contract provider shall furnish to the trustee a copy of the preneed contract, contract owner's death certificate or proof of death, and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds, which shall not be less than the amount deposited in trust. In the limited instance only when a preneed provider furnishes a personalized, engraved marker, headstone or monument before death, the trustee may disburse to the preneed provider compensation for the engraved marker, headstone or monument as well as any associated engraving, setting or delivery fees. In those instances, no disbursement from the trust shall be made until the trustee receives from the preneed provider a delivery ticket or invoice, documentation for the engraving of identifying information regarding the purchaser, and a letter of performance indicating that the engraved marker, headstone or monument has been provided.

Any trust officer or trust institution that releases trust funds for funeral services or merchandise in a manner contrary with the provisions of this article shall be liable for the same. Furthermore, any trustee or trust

institution that engages in fraud, deceit, misrepresentation, or misappropriation of trust funds to the detriment of a contract provider or a contract insured shall be liable for the same.

(7) If a substitute provider was named by the contract beneficiary, during his life, or by one with the legal authority to act on his behalf at any time, the substitute provider shall provide the trustee with a death certificate or published obituary along with an invoice verifying that the substitute provider serviced the final needs of the beneficiary. Within ten (10) days of receipt of the documentation of death and invoice from the substitute provider, the trustee shall pay the substitute provider or the estate of the contract beneficiary not less than the amount deposited in trust on behalf of the serviced beneficiary. For all trust funded preneed contracts sold on or after July 1, 2012, the trustee shall pay the substitute provider not less than the amount deposited into trust on behalf of the serviced beneficiary in addition to all earnings, interest and income on the beneficiary's principal.

(8) Preneed trust funds are exempt from all claims of creditors of the preneed provider, except as to the claims of the contract purchaser or his representatives, and cannot be used as collateral, pledged or in any way encumbered or placed at risk.

SOURCES: Laws, 2001, ch. 513, § 5; Laws, 2006, ch. 472, § 1; Laws, 2009, ch. 549, § 5; Laws, 2012, ch. 308, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error at the end of subsection (3)(b) by substituting "any of those persons" for "any of those person." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Amendment Notes — The 2012 amendment added (3)(a) and (b) and rewrote former (6) as (7).

§ 75-63-63. Preneed contracts to be portable; who may name a substitute provider.

Preneed contracts entered into in this state shall be portable. The naming of a substitute provider shall be in writing by the contract beneficiary or by one who is authorized by law to act on their behalf. If the preneed contract is funded by trust, the notice of a substitute provider shall be made to the original preneed contract seller and the trustee holding funds for the beneficiary. Upon receipt of the notice of substitute provider, the original provider shall be relieved of all obligations to perform the contract including all obligations of reporting and accounting. If the preneed contract is funded by insurance, the change of beneficiary shall be made in writing to the insurance company. If for any reason insurance proceeds are paid to a preneed seller who did not furnish the final needs of the beneficiary at their time of need, the policy proceeds shall be paid in full to the substitute provider or the estate of the preneed beneficiary within ten (10) days of receipt.

SOURCES: Laws, 2001, ch. 513, § 7; Laws, 2012, ch. 308, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

§ 75-63-68. Conversion of trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contract upon appeal to Secretary of State; written disclosure of terms to affected preneed purchasers.

A registered preneed contract provider may convert trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contracts upon appeal to the Secretary of State. If approved, the Secretary of State shall issue an order authorizing the withdrawal of funds for the provider to purchase preneed insurance or annuity contracts. The preneed seller shall disclose in writing to all affected preneed purchasers the terms of the insurance policy or annuity contract. Except as provided in this section, no funds deposited in trust with a trustee shall be withdrawn by the trustee to purchase a preneed insurance policy or annuity contracts.

SOURCES: Laws, 2009, ch. 549, § 9; Laws, 2012, ch. 308, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the second sentence.

CHAPTER 66

Home Solicitation Sales

§ 75-66-3. Buyer's right of cancellation; notice.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made a stylistic correction in subsection (1) by substituting "subsection (5) of this section" for "paragraph (5) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 75-66-5. When buyer's signature required on agreement or offer to purchase or attached statement; contents of documents; effect of seller's failure to comply with section.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation made stylistic corrections in the last sentence of (1) and at the end of (3) by substituting "subsection (2) or subsection (3)" for "paragraph 2 or paragraph 3" and "subsection (2)" for "subparagraph (2)," respectively. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 67

Loans

Article 1.

General Provision.

§ 75-67-39. Interest charges with respect to monthly or weekly installment loans.

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

Article 3.

Small Loan Regulatory Law.

Sec.

§ 75-67-119. Penalties for imposition of excessive finance charges.

Editor's Note — Laws of 1986, ch. 510, § 17, effective July 1, 1986, provide as follows:

"SECTION 17. This act shall not be construed as stating explicitly and by its terms that the State of Mississippi does not want the provisions of Sections 501(a)(1), 511, and 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, to apply with respect to loans, mortgages, credit sales, and advances made in this state, and the preemption of state law provided by such sections, as amended, shall remain in full force and effect in the State of Mississippi."

RESEARCH REFERENCES

ALR. Preemption Issues Under Depository Institutions Deregulation and Monetary Control Act. 28 A.L.R. Fed. 2d 467.

§ 75-67-121. Recording and attorney's fees; insurance premiums; licensee may offer borrower opportunity to purchase auto club membership under certain circumstances.

Any licensee under this article may charge any borrower on loans of One Hundred Dollars ($100.00) or more the actual cost of recording any instrument executed as security for a loan; any reasonable fee paid to an attorney for investigating the title to any property given as security for a loan; the actual cost of any premium paid for insurance upon any property given as security for a loan, such insurance to be placed with an insurance company agent of the borrower's selection so long as it is licensed to do business in the State of Mississippi; the actual cost of any premium paid for life, health and/or accident insurance on any borrower where the amount of insurance required is not in excess of the amount of the loan and the premium for the insurance is in keeping with that usually and customarily paid for like insurance.

In addition, after the licensee has fully approved the loan to the borrower, the licensee may offer the borrower the opportunity to purchase an auto club membership. The licensee shall inform the borrower in writing that the purchase of an auto club membership is optional and is not required as a condition of receiving the loan, and that failure to purchase an auto club membership will not affect the licensee's approval of the loan or the receipt of the loan by the borrower. The notification shall be initialed by the borrower. If the borrower chooses to purchase an auto club membership, the licensee shall allow the borrower to pay the cost of the auto club membership using funds other than the proceeds of a loan or have the cost deducted from the proceeds of any loan obtained from the licensee. The borrower shall be allowed to cancel the auto club membership for a full refund of the purchase price at any time within thirty (30) days after the date of purchase from the licensee if the borrower has not used any of the services provided through the auto club membership. The commissioner shall monitor the number of loans made by licensees with which the borrower chooses to purchase an auto club membership, and shall report that information to the Chairmen of the House Banking and Financial Services Committee and the Senate Business and Financial Institutions Committee by January 1, 2009. This paragraph shall stand repealed on July 1, 2015.

Whenever he finds it necessary, the Commissioner of Banking and Consumer Finance shall have the power to adopt and enforce reasonable rules and regulations to prevent the abuse of this section and the making of excessive charges under this section.

SOURCES: Codes, 1942, § 5591-11; Laws, 1958, ch. 170, § 11; Laws, 2005, ch. 438, § 2; Laws, 2006, ch. 509, § 1; Laws, 2008, ch. 369, § 1; Laws, 2010, ch. 522, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "July 1, 2015" for "July 1, 2010" at the end of the second paragraph.

ARTICLE 5.

SMALL LOAN PRIVILEGE TAX LAW.

§ 75-67-219. Return of bond and fees upon denial of application for license.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of the section by substituting "Small Loan Regulatory Law (Section 75-67-101 et seq.)" for "Small Loan Law [Sections 75-67-101 to 75-67-135]." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

ARTICLE 7.

MISSISSIPPI PAWNSHOP ACT.

SEC.

§ 75-67-323. Eligibility requirements for license; posting of license and sign in conspicuous place; prelicensing education requirement.

(1) To be eligible for a pawnbroker license, an applicant shall:

(a) Operate lawfully and fairly within the purposes of this article;

(b) Not have been convicted of a felony in the last ten (10) years or be active as a beneficial owner for someone who has been convicted of a felony in the last ten (10) years;

(c) File with the commissioner a bond with good security in the penal sum of Ten Thousand Dollars ($10,000.00), payable to the State of Mississippi for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against such licensee on account of damages or other claim arising directly or collaterally from any violation of the provisions of this article; such bond shall not be valid until it is approved by the commissioner; such applicant may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Ten Thousand Dollars ($10,000.00); such deposit shall be filed with the commissioner and is subject to the same terms and conditions as are provided for in the surety bond required herein; any interest or earnings on such deposits are payable to the depositor;

(d) File with the commissioner an application accompanied by the initial license fee required in this article;

(e) Submit a set of fingerprints from any local law enforcement agency. In order to determine the applicant's suitability for license, the commis-

sioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(2) Every licensee shall post his license in a conspicuous place at each place of business.

(3) Every licensee shall post and display a sign which measures at least twenty (20) inches by twenty (20) inches in a conspicuous place and in easy view of all persons who enter the place of business. The sign shall display bold, blocked letters, easily readable, with the following information: "This pawnshop is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you encounter any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, Post Office Drawer 23729, Jackson, MS 39225-3729; Phone 1-800-844-2499."

(4) From and after December 1, 2010, each application for an initial license shall include evidence of the satisfactory completion of at least six (6) hours of approved prelicensing education, and each application for renewal shall include evidence of the satisfactory completion of at least six (6) hours of approved continuing education, by the owners or designated representative in pawnbroker transactions. Two (2) of the six (6) hours shall consist of instruction on the Mississippi Pawnshop Act and shall be approved by the department once the course is approved by the Mississippi Pawnbrokers Association or the National Pawnbrokers Association.

SOURCES: Laws, 1993, ch. 598, § 12; Laws, 2001, ch. 503, § 3; Laws, 2010, ch. 360, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment made a stylistic change in (1)(c) and (1)(d); and added (4).

§ 75-67-325. Suspension or revocation of license; conditional license; surrender of license; reinstatement of license; enforcement by Commissioner of Banking.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(c) by substituting "this article" for "the article." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

Article 9.

Title Pledge Act.

§ 75-67-435. Administration of chapter; examination of books and records.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "To assure compliance with the provisions of this article" for "To assure compliance with the provision of this article." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

Article 11.

Mississippi Check Cashers Act.

Sec.
75-67-505. Licensing requirements.
75-67-519. Deferred and delayed deposits; licensee to provide consumer education pamplet to customer.
75-67-539. Repealed.

§ 75-67-501. Short title.

SOURCES: Laws, 1998, ch. 587, § 1; reenacted and amended, Laws, 1999, ch. 481, § 1; reenacted without change, Laws, 2003, ch. 341; reenacted without change, Laws, 2007, ch. 488, § 1; reenacted without change, Laws, 2011, ch. 309, § 1; reenacted without change, Laws, 2013, ch. 408, § 1, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-503. Definitions.

SOURCES: Laws, 1998, ch. 587, § 2; reenacted and amended, Laws, 1999, ch. 481, § 2; reenacted without change, Laws, 2003, ch. 341, § 2; reenacted without change, Laws, 2007, ch. 488, § 2; reenacted without change, Laws, 2011, ch. 309, § 2; reenacted without change, Laws, 2013, ch. 408, § 2, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-505. Licensing requirements.

(1)(a) A person may not engage in business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business. Any transaction that would be subject to this article that is made by a person who does not have a valid license under this article shall be null and void. A separate license is required for each place of business under this article and each business must be independent of, and not a part of, any other business operation. A check cashing business shall not be a part of, or located at the same business address with, a pawnshop, title pledge office and small loan company.

(b) A check cashing business shall (i) have a definitive United States Postal address and E911 address; (ii) comply with local zoning requirements; (iii) have a minimum of one hundred (100) square feet with walls from floor to ceiling separating the operation from any other businesses; (iv) have an outside entrance, but may be located in an area that has a common lobby shared by other businesses as long as the customers do not enter the check cashing business through another business; (v) have proper signage; and (vi) maintain separate books and records. Any licensee who does not cash any delayed deposit checks as authorized under Section 75-67-519 shall not be subject to the requirements of subparagraphs (i), (iii) and (iv) of this paragraph.

(c) A licensed check casher may sell, at the same location as his check cashing business, the following items and services: money orders; income tax preparation service; copy service; wire transfer service; notary service; pagers; pager service; prepaid cellular service; debit card; prepaid telephone cards; prepaid telephone service; and operate a processing center where utility bills, credit card payments and other payments are collected from the general public and governmental and private payments are distributed. In the event a licensee accepts wire transfers in the form of a direct deposit of a payroll check or other similar types of deposit, the licensee shall not encumber any transferred funds against a deferred deposit agreement or any delinquent deferred deposit agreement with such customer. The commissioner may authorize additional functions in addition to those provided in this subsection that may be performed as part of a check cashing business.

(d) The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license is required upon a change, directly or beneficially, in the ownership of any licensed check casher business and an application shall be made to the commissioner in accordance with this article.

(2) When a licensee wishes to move a check casher business to another location, the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operator of a check casher business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed check casher. The temporary license is effective until the permanent license is issued or denied.

SOURCES: Laws, 1998, ch. 587, § 3; reenacted and amended, Laws, 1999, ch. 481, § 3; Laws, 2001, ch. 534, § 1; reenacted without change, Laws, 2003, ch. 341, § 3; reenacted and amended, Laws, 2007, ch. 488, § 3; reenacted and amended, Laws, 2011, ch. 309, § 3; reenacted without change, Laws, 2013, ch. 408, § 3, eff from and after passage (approved March 20, 2013.)

Amendment Notes — The 2011 amendment reenacted and amended the section by adding the second sentence in (1)(a).

The 2013 amendment reenacted the section without change.

§ 75-67-507. Exemptions.

SOURCES: Laws, 1998, ch. 587, § 4; reenacted and amended, Laws, 1999, ch. 481, § 4; reenacted and amended, Laws, 2003, ch. 341, § 4; reenacted without change, Laws, 2007, ch. 488, § 4; reenacted without change, Laws, 2011, ch. 309, § 4; reenacted without change, Laws, 2013, ch. 408, § 4, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-509. Applicant eligibility requirements.

SOURCES: Laws, 1998, ch. 587, § 5; reenacted and amended, Laws, 1999, ch. 481, § 5; reenacted without change, Laws, 2003, ch. 341, § 5; reenacted without change, Laws, 2007, ch. 488, § 5; reenacted without change, Laws, 2011, ch. 309, § 5; reenacted without change, Laws, 2013, ch. 408, § 5, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

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Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-511. Application form.

SOURCES: Laws, 1998, ch. 587, § 6; reenacted and amended, Laws, 1999, ch. 481, § 6; reenacted without change, Laws, 2003, ch. 341, § 6; reenacted without change, Laws, 2007, ch. 488, § 6; reenacted without change, Laws, 2011, ch. 309, § 6; reenacted without change, Laws, 2013, ch. 408, § 6, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-513. Investigations, findings and posting of licenses.

SOURCES: Laws, 1998, ch. 587, § 7; reenacted and amended, Laws, 1999, ch. 481, § 7; reenacted without change, Laws, 2003, ch. 341, § 7; reenacted without change, Laws, 2007, ch. 488, § 7; reenacted without change, Laws, 2011, ch. 309, § 7; reenacted without change, Laws, 2013, ch. 408, § 7, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-515. Licensee duties; regulations; examination of books and records.

SOURCES: Laws, 1998, ch. 587, § 8; reenacted and amended, Laws, 1999, ch. 481, § 8; Laws, 2001, ch. 534, § 2; reenacted and amended, Laws, 2003, ch. 341, § 8; reenacted without change, Laws, 2007, ch. 488, § 8; reenacted without change, Laws, 2011, ch. 309, § 8; reenacted without change, Laws, 2013, ch. 408, § 8, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-516. Licensee prohibited from advertising, displaying, or publishing false or misleading statements.

SOURCES: Laws, 2001, ch. 534, § 5; reenacted without change, Laws, 2003, ch. 341, § 9; reenacted without change, Laws, 2007, ch. 488, § 9; reenacted without change, Laws, 2011, ch. 309, § 9; reenacted without change, Laws, 2013, ch. 408, § 9, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective from and after February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-517. Maximum fees; advancing monies; time to deposit check.

SOURCES: Laws, 1998, ch. 587, § 9; reenacted and amended, Laws, 1999, ch. 481, § 9; reenacted without change, Laws, 2003, ch. 341, § 10; reenacted without change, Laws, 2007, ch. 488, § 10; reenacted without change, Laws, 2011, ch. 309, § 10; reenacted without change, Laws, 2013, ch. 408, § 10, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24th, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change. The 2013 amendment reenacted the section without change.

§ 75-67-519. Deferred and delayed deposits; licensee to provide consumer education pamplet to customer.

(1)(a) A licensee may delay the deposit of a personal check cashed for a customer with a face amount of not more than Two Hundred Fifty Dollars ($250.00) for up to thirty (30) days under the provisions of this section.

(b) A licensee shall enter into a written agreement for a delayed deposit transaction of a personal check cashed for a customer with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00) for a period of at least twenty-eight (28) days but not more than thirty (30) days, as selected by the customer, under the provisions of this section, with the licensee having the option to deposit or collect the check.

(2) The face amount of delayed deposit checks cashed under the provisions of this section shall not exceed Five Hundred Dollars ($500.00), including the amount of the fees. Each customer is limited to a maximum amount of Five Hundred Dollars ($500.00), including the amount of the fees, at any time.

(3) Each delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to delay deposit of the personal check with a face amount of not more than Two Hundred Fifty Dollars ($250.00) until a specific date not later than thirty (30) days from the date of the transaction, and shall authorize the licensee to delay deposit or collection of the personal check with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00) in accordance with the written agreement.

(4)(a) A licensee shall not directly or indirectly charge any fee or other consideration in excess of Twenty Dollars ($20.00) per One Hundred Dollars ($100.00) advanced for cashing a delayed deposit check with a face amount of not more than Two Hundred Fifty Dollars ($250.00).

(b) A licensee shall not directly or indirectly charge any fee or other consideration in excess of Twenty-one Dollars and Ninety-five Cents ($21.95) per One Hundred Dollars ($100.00) advanced for cashing a delayed deposit check with a face amount of more than Two Hundred Fifty Dollars ($250.00) but not more than Five Hundred Dollars ($500.00).

(c) In no event shall the amount of the checks cashed exceed Five Hundred Dollars ($500.00), including the amount of the fee.

(5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the

licensee. A licensee shall not renew or otherwise extend any delayed deposit check.

(6) A licensee shall not offer discount catalog sales or other similar inducements as part of a delayed deposit transaction.

(7) A licensee shall not charge a late fee or collection fee on any deferred deposit transaction as a result of a returned check or the default by the customer in timely payment to the licensee. Notwithstanding anything to the contrary contained in this section, a licensee may charge a processing fee, not to exceed an amount authorized by the commissioner, for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment, if such processing fee is authorized in the written agreement signed by the customer and licensee. In addition, if a licensee takes legal action against a customer to collect the amount of a delayed deposit check for which the licensee has not obtained payment and obtains a judgment against the customer for the amount of that check, the licensee shall also be entitled to any court-awarded fees.

(8) When cashing a delayed deposit check, a licensee may pay the customer in the form of the licensee's business check or a money order; however, no additional fee may then be charged by the licensee for cashing the licensee's business check or money order issued to the customer.

(9) Before entering any transactions under this section, a licensee shall provide to the customer a pamphlet prepared by the commissioner that describes general information about the transaction and about the customer's rights and responsibilities in the transaction, and that includes the consumer hotline phone number to the Mississippi Department of Banking and Consumer Finance and to the Mississippi Attorney General's office. Each agreement executed by a licensee shall include the following statement, which shall be located just above the signature line for the customer:

"In addition to agreeing to the terms of this agreement, I acknowledge, by my signature below, the receipt of a consumer education pamphlet regarding this transaction."

SOURCES: Laws, 1998, ch. 587, § 10; reenacted and amended, Laws, 1999, ch. 481, § 10; Laws, 2001, ch. 534, § 3; reenacted without change, Laws, 2003, ch. 341, § 11; reenacted without change, Laws, 2007, ch. 488, § 11; Laws, 2011, ch. 309, § 11; reenacted without change, Laws, 2013, ch. 408, § 11, eff from and after passage (approved March 20, 2013.)

Amendment Notes — The 2011 amendment provided two versions of the section, in the first version effective through December 31, 2011, added (9); in the second version, effective from and after January 1, 2012, rewrote (1) through (4), and added (9).

The 2013 amendment reenacted the section without change.

§ 75-67-521. Suspending or revoking license; reinstatement; notice to law enforcement.

SOURCES: Laws, 1998, ch. 587, § 11; reenacted and amended, Laws, 1999, ch. 481, § 11; reenacted without change, Laws, 2003, ch. 341, § 12; reenacted

without change, Laws, 2007, ch. 488, § 12; reenacted without change, Laws, 2011, ch. 309, § 12; reenacted without change, Laws, 2013, ch. 408, § 12, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-523. Investigative powers and examinations.

SOURCES: Laws, 1998, ch. 587, § 12; reenacted and amended, Laws, 1999, ch. 481, § 12; reenacted without change, Laws, 2003, ch. 341, § 13; reenacted without change, Laws, 2007, ch. 488, § 13; reenacted without change, Laws, 2011, ch. 309, § 13; reenacted without change, Laws, 2013, ch. 408, § 13, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-525. Engaging in business without license; penalty.

SOURCES: Laws, 1998, ch. 587, § 13; reenacted and amended, Laws, 1999, ch. 481, § 13; Laws, 2001, ch. 534, § 4; reenacted without change, Laws, 2003, ch. 341, § 14; reenacted without change, Laws, 2007, ch. 488, § 14; reenacted without change, Laws, 2011, ch. 309, § 14; reenacted without change, Laws, 2013, ch. 408, § 14, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-527. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture.

SOURCES: Laws, 1998, ch. 587, § 14; reenacted and amended, Laws, 1999, ch. 481, § 14; reenacted without change, Laws, 2003, ch. 341, § 15; reenacted

without change, Laws, 2007, ch. 488, § 15; reenacted without change, Laws, 2011, ch. 309, § 15; reenacted without change, Laws, 2013, ch. 408, § 15, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-529. Severability.

SOURCES: Laws, 1998, ch. 587, § 15; reenacted and amended, Laws, 1999, ch. 481, § 15; reenacted without change, Laws, 2003, ch. 341, § 16; reenacted without change, Laws, 2007, ch. 488, § 16; reenacted without change, Laws, 2011, ch. 309, § 16; reenacted without change, Laws, 2013, ch. 408, § 16, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-531. Application deadline for existing businesses.

SOURCES: Laws, 1998, ch. 587, § 16; reenacted and amended, Laws, 1999, ch. 481, § 16; reenacted without change, Laws, 2003, ch. 341, § 17; reenacted without change, Laws, 2007, ch. 488, § 17; reenacted without change, Laws, 2011, ch. 309, § 17; reenacted without change, Laws, 2013, ch. 408, § 17, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-533. Forms.

SOURCES: Laws, 1998, ch. 587, § 17; reenacted and amended, Laws, 1999, ch. 481, § 17; reenacted without change, Laws, 2003, ch. 341, § 18; reenacted without change, Laws, 2007, ch. 488, § 18; reenacted without change,

Laws, 2011, ch. 309, § 18; reenacted without change, Laws, 2013, ch. 408, § 18, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-535. Municipal ordinances.

SOURCES: Laws, 1998, ch. 587, § 18; reenacted and amended, Laws, 1999, ch. 481, § 18; reenacted without change, Laws, 2003, ch. 341, § 19; reenacted without change, Laws, 2007, ch. 488, § 19; reenacted without change, Laws, 2011, ch. 309, § 19; reenacted without change; Laws, 2013, ch. 408, § 19, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-537. Commissioner employees and funds authorized for enforcement.

SOURCES: Laws, 1998, ch. 587, § 19; reenacted and amended, Laws, 1999, ch. 481, § 19; reenacted without change, Laws, 2003, ch. 341, § 20; reenacted without change, Laws, 2007, ch. 488, § 20; reenacted without change, Laws, 2011, ch. 309, § 20; reenacted without change, Laws, 2013, ch. 408, § 20, eff from and after passage (approved March 20, 2013.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 309, effective February 24, 2011. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Chapter 408, Laws of 2013, effective from and after March 20, 2013. Since the language of this section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

The 2013 amendment reenacted the section without change.

§ 75-67-539. Repealed.

Repealed by Laws of 2013, ch. 408, § 21, eff from and after passage (approved March 20, 2013).

§ 75-67-539. [Laws, 1998, ch. 587, § 20; reenacted and amended, Laws, 1999, ch. 481, § 20; Laws, 2001, ch. 534, § 6; Laws, 2003, ch. 341, § 21; Laws,

2007, ch. 488, § 21; Laws, 2011, ch. 309, § 21, eff from and after passage (approved Feb. 24, 2011.)]

Editor's Note — Former § 75-67-539 was the repealer on the Mississippi Check Cashers Act, codified as Sections 75-67-501 through 75-67-537.

CHAPTER 71

Mississippi Securities Act of 2009

ARTICLE 6.

ADMINISTRATION AND JUDICIAL REVIEW.

§ 75-71-605. Rules, forms, orders, interpretative opinions, and hearings.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c)(1) by substituting "Investment Advisers Act" for "Investment Advisors Act." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 75-71-608. Uniformity and cooperation with other agencies.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the Code section number assigned to this section by substituting the Code section number 75-71-608 for the Code section number 75-72-608, which is how it appeared as enacted by Section 1 of Chapter 528, Laws of 2009. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 75

Amusements, Exhibitions and Athletic Events

ARTICLE 3.

ATHLETIC EVENTS.

§ 75-75-119. Fine for violating rules.

Any person who shall willfully violate any rule or regulation passed or adopted by the Mississippi Athletic Commission shall be fined by the commission as follows:

(a) For boxer or wrestler, up to Five Hundred Dollars ($500.00) or up to twenty-five percent (25%) of contracted purse;

(b) For trainer, second or manager, up to Five Hundred Dollars ($500.00) or up to ten percent (10%) of contracted amount of the represented fighter;

(c) For promoter or director, up to Five Hundred Dollars ($500.00) or up to twenty-five percent (25%) of contracted amount of the highest two (2) combined bout purses during an event; and

(d) Referee, judge, timekeeper or matchmaker, up to Five Hundred Dollars ($500.00) or twenty-five percent (25%) of the contracted pay for that event.

SOURCES: Codes, 1930, § 3652; 1942, § 8933; Laws, 1928, ch. 54; reenacted without change, Laws, 1983, ch. 483, § 11; reenacted without change, Laws, 1991, ch. 517, § 11; reenacted without change, Laws, 1995, ch. 301, § 11; Laws, 2009, ch. 550, § 1; Laws, 2010, ch. 394, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the introductory paragraph, deleted "on conviction" following "Mississippi Athletic Commission" and inserted "by the commission."

CHAPTER 76

Mississippi Gaming Control Act

GENERAL PROVISIONS

SEC.

§ 75-76-5. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Applicant" means any person who has applied for or is about to apply for a state gaming license, registration or finding of suitability under the provisions of this chapter or approval of any act or transaction for which approval is required or permitted under the provisions of this chapter.

(b) "Application" means a request for the issuance of a state gaming license, registration or finding of suitability under the provisions of this chapter or for approval of any act or transaction for which approval is required or permitted under the provisions of this chapter but does not include any supplemental forms or information that may be required with the application.

(c) "Associated equipment" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or with any game, race book or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines, and devices for weighing or counting money.

(d) "Chairman" means the Chairman of the Mississippi Gaming Commission except when used in the term "Chairman of the State Tax Commission." "Chairman of the State Tax Commission" or "commissioner" means the Commissioner of Revenue of the Department of Revenue.

(e) "Commission" or "Mississippi Gaming Commission" means the Mississippi Gaming Commission.

(f) "Commission member" means a member of the Mississippi Gaming Commission.

(g) "Credit instrument" means a writing which evidences a gaming debt owed to a person who holds a license at the time the debt is created, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

(h) "Enforcement division" means a particular division supervised by the executive director that provides enforcement functions.

(i) "Establishment" means any premises wherein or whereon any gaming is done.

(j) "Executive director" means the Executive Director of the Mississippi Gaming Commission.

(k) Except as otherwise provided by law, "game," or "gambling game" means any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting, the generality of the foregoing, faro, monte, roulette, keno, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, or any other game or device approved by the commission. However, "game" or "gambling game" shall not include bingo games or raffles which are held pursuant to the provisions of Section 97-33-51, or the illegal gambling activities described in Section 97-33-8.

The commission shall not be required to recognize any game hereunder with respect to which the commission determines it does not have sufficient experience or expertise.

(*l*) "Gaming" or "gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter.

(m) "Gaming device" means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or

any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined, and does not include any antique coin machine as defined in Section 27-27-12.

(n) "Gaming employee" means any person connected directly with the operation of a gaming establishment licensed to conduct any game, including:

(i) Boxmen;

(ii) Cashiers;

(iii) Change personnel;

(iv) Counting room personnel;

(v) Dealers;

(vi) Floormen;

(vii) Hosts or other persons empowered to extend credit or complimentary services;

(viii) Keno runners;

(ix) Keno writers;

(x) Machine mechanics;

(xi) Security personnel;

(xii) Shift or pit bosses;

(xiii) Shills;

(xiv) Supervisors or managers; and

(xv) Ticket writers.

The term "gaming employee" also includes employees of manufacturers or distributors of gaming equipment within this state whose duties are directly involved with the manufacture, repair or distribution of gaming equipment.

"Gaming employee" does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity.

(o) "Gaming license" means any license issued by the state which authorizes the person named therein to engage in gaming.

(p) "Gross revenue" means the total of all of the following, less the total of all cash paid out as losses to patrons and those amounts paid to purchase annuities to fund losses paid to patrons over several years by independent financial institutions:

(i) Cash received as winnings;

(ii) Cash received in payment for credit extended by a licensee to a patron for purposes of gaming; and

(iii) Compensation received for conducting any game in which the licensee is not party to a wager.

For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

(i) Counterfeit money or tokens;

(ii) Coins of other countries which are received in gaming devices;

(iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or

(iv) Cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

(q) "Hearing examiner" means a member of the Mississippi Gaming Commission or other person authorized by the commission to conduct hearings.

(r) "Investigation division" means a particular division supervised by the executive director that provides investigative functions.

(s) "License" means a gaming license or a manufacturer's, seller's or distributor's license.

(t) "Licensee" means any person to whom a valid license has been issued.

(u) "License fees" means monies required by law to be paid to obtain or continue a gaming license or a manufacturer's, seller's or distributor's license.

(v) "Licensed gaming establishment" means any premises licensed pursuant to the provisions of this chapter wherein or whereon gaming is done.

(w) "Manufacturer's," "seller's" or "distributor's" license means a license issued pursuant to Section 75-76-79.

(x) "Navigable waters" shall have the meaning ascribed to such term under Section 27-109-1.

(y) "Operation" means the conduct of gaming.

(z) "Party" means the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding before the commission; or the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding for judicial review of any action, decision or order of the commission.

(aa) "Person" includes any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.

(bb) "Premises" means land, together with all buildings, improvements and personal property located thereon, and includes all parts of any vessel or cruise vessel.

(cc) "Race book" means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.

(dd) "Regulation" means a rule, standard, directive or statement of general applicability which effectuates law or policy or which describes the procedure or requirements for practicing before the commission. The term includes a proposed regulation and the amendment or repeal of a prior regulation but does not include:

(i) A statement concerning only the internal management of the commission and not affecting the rights or procedures available to any licensee or other person;

(ii) A declaratory ruling;

(iii) An interagency memorandum;

(iv) The commission's decision in a contested case or relating to an application for a license; or

(v) Any notice concerning the fees to be charged which are necessary for the administration of this chapter.

(ee) "Respondent" means any licensee or other person against whom a complaint has been filed with the commission.

(ff) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any antique coin machine as defined in Section 27-27-12.

(gg) "Sports pool" means the business of accepting wagers on sporting events, except for athletic events, by any system or method of wagering other than the system known as the "pari-mutuel method of wagering."

(hh) "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(ii) "Temporary work permit" means a work permit which is valid only for a period not to exceed ninety (90) days from its date of issue and which is not renewable.

(jj) "Vessel" or "cruise vessel" shall have the meanings ascribed to such terms under Section 27-109-1.

(kk) "Work permit" means any card, certificate or permit issued by the commission, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee. A document issued by any governmental authority for any employment other than gaming is not a valid work permit for the purposes of this chapter.

(*ll*) "School or training institution" means any school or training institution which is licensed by the commission to teach or train gaming employees pursuant to Section 75-76-34.

(mm) "Cheat" means to alter the selection of criteria that determine:

(i) The rules of a game; or

(ii) The amount or frequency of payment in a game.

(nn) "Promotional activity" means an activity or event conducted or held for the purpose of promoting or marketing the individual licensed gaming establishment that is engaging in the promotional activity. The term includes, but is not limited to, a game of any kind other than as defined in paragraph (k) of this section, a tournament, a contest, a drawing, or a promotion of any kind.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 3; Laws, 1991, ch. 543, § 2; Laws, 1992, ch. 371, § 4; Laws, 1993, ch. 488, § 1; Laws, 2009, ch. 384, § 2; Laws, 2009, ch. 492, § 141; Laws, 2013, ch. 410, § 5, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added "or the illegal gambling activities described in Section 97-33-8" at the end of the last sentence in (k).

JUDICIAL DECISIONS

3. Slot machines.

Computer terminals seized from an internet cafe met the definition of slot machines under Miss. Code Ann. § 75-76-5(ff), as cafe customers would purchase telephone calling cards, swipe the cards in a terminal's card reader and play sweepstakes points in video games that stimulated slot machines; an element of chance existed as a customer who purchased a card did not know whether the card contained winning or losing sweepstake points. Moore v. Miss. Gaming Comm'n, 64 So. 3d 537 (Miss. Ct. App. 2011).

MISSISSIPPI GAMING COMMISSION; EXECUTIVE DIRECTOR

SEC.

§ 75-76-9. Appointment of members; terms; chairman; vacancies; conflicts of interest; per diem.

(1) This section shall take effect from and after October 1, 1993.

(2) Initial appointments to the commission made pursuant to this chapter shall be for terms as follows:

(a) One (1) member for two (2) years;

(b) One (1) member for three (3) years; and

(c) One (1) member for four (4) years.

(3) The term of each of the members first appointed pursuant to this chapter shall be designated by the Governor.

(4) After the initial appointments, all members shall be appointed for terms of four (4) years from the expiration date of the previous term; provided, however, that no member shall serve more than two (2) terms of four (4) years each.

(5) Appointments to the commission and designation of the chairman shall be made by the Governor with the advice and consent of the Senate. Prior to the nomination, the PEER Committee shall conduct an inquiry into the

nominee's background, with particular regard to the nominee's financial stability, integrity and responsibility and his reputation for good character, honesty and integrity.

(6) The member designated by the Governor to serve as chairman shall serve in such capacity throughout such member's entire term and until his successor shall have been duly appointed and qualified. No such member, however, shall serve in such capacity for more than ten (10) years.

(7) Appointments to fill vacancies on the commission shall be for the unexpired term of the member to be replaced.

(8) Members of the commission shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the commission and shall be governed by the provisions of Section 109 of the Mississippi Constitution and Section 25-4-105. In addition, members of the commission shall not receive anything of value from, or on behalf of, any person holding or applying for a gaming license under this chapter.

(9) Each member of the commission shall serve for the duration of his term and until his successor shall be duly appointed and qualified; provided, however, that in the event that a successor is not duly appointed and qualified within one hundred twenty (120) days after the expiration of the member's term, a vacancy shall be deemed to exist.

(10) Each member of the commission is entitled to per diem as provided by Section 25-3-69.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 5; Laws, 2010, ch. 431, § 5, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment added the last sentence in (8).

§ 75-76-15. State Tax Commission to appoint temporary director; qualifications of executive directors; salary.

(1) [Repealed]

(2) From and after October 1, 1993, the position of Executive Director of the Mississippi Gaming Commission is hereby created.

(3) The Gaming Commission shall appoint the executive director, with the advice and consent of the Senate, and the executive director shall serve at the will and pleasure of the commission. The director appointed by the State Tax Commission pursuant to subsection (1) of this section who is serving on September 30, 1993, shall serve as the Executive Director of the Mississippi Gaming Commission until the executive director appointed by the Gaming Commission pursuant to this section is confirmed by the Senate.

(4) No member of the Legislature, no person holding any elective office, nor any officer or official of any political party is eligible for the appointment of executive director.

(5) The executive director must have at least five (5) years of responsible administrative experience in public or business administration or possess broad management skills.

(6) The executive director shall devote his entire time and attention to his duties under this chapter and the business of the commission and shall not pursue any other business or occupation or hold any other office of profit.

(7) The executive director shall not be pecuniarily interested in any business or organization holding a gaming license under this chapter or doing business with any person or organization licensed under this chapter and shall be governed by the provisions of Section 25-4-105. In addition, the executive director shall not receive anything of value from, or on behalf of, any person holding or applying for a gaming license under this chapter.

(8) The executive director is entitled to an annual salary in the amount specified by the commission, subject to the approval of the State Personnel Board, within the limits of legislative appropriations or authorizations.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 8; Laws, 2010, ch. 431, § 6, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment, in (7), added "and shall be governed by the provisions of Section 25-4-105" in the first sentence, and added the last sentence.

§ 75-76-25. Attorney General to represent and advise commission and executive director.

Except as otherwise authorized in Section 7-5-39, the Attorney General and his assistants shall represent the commission and the executive director in any proceeding to which the commission or the executive director is a party under this chapter and shall also advise the commission and the executive director in all other matters, including representing the commission when the commission sits in a quasi-judicial capacity.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 13; Laws, 2012, ch. 546, § 41, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment combined the former two sentences into one sentence; added the exception at the beginning, and made a minor stylistic change.

§ 75-76-33. Authority of commission to adopt, amend or repeal regulations; particular regulations specified; regulations licensees required to comply with.

(1) The commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter, as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter. The commission shall comply with the Mississippi Administrative Procedures Law when adopting, amending or repealing any regulations authorized under this section or under any other provision of this chapter.

(2) These regulations shall, without limiting the general powers herein conferred, include the following:

(a) Prescribing the method and form of application which any applicant for a license or for a manufacturer's, seller's or distributor's license must follow and complete before consideration of his application by the executive director or the commission.

(b) Prescribing the information to be furnished by any applicant or licensee concerning his antecedents, habits, character, associates, criminal record, business activities and financial affairs, past or present.

(c) Prescribing the information to be furnished by a licensee relating to his employees.

(d) Requiring fingerprinting of an applicant or licensee, and gaming employees of a licensee, or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(e) Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner of the commission, including special rules of evidence applicable thereto and notices thereof.

(f) Requiring any applicant to pay all or any part of the fees and costs of investigation of such applicant as may be determined by the commission under paragraph (g) of this subsection (2).

(g) Prescribing the amounts of investigative fees only as authorized by regulations of the commission under paragraph (f) of this subsection, and collecting those fees. The commission shall adopt regulations setting the amounts of those fees at levels that will provide the commission with sufficient revenue, when combined with any other monies as may be deposited into the Mississippi Gaming Commission Fund created in Section 75-76-325, to carry out the provisions of this chapter without any state general funds. In calculating the amount of such fees, the commission shall:

(i) Attempt to set the fees at levels that will create a balance in the Mississippi Gaming Commission Fund that does not exceed, at the end of any state fiscal year, two percent (2%) of the projected amount of funds that will provide the commission with such sufficient revenue; and

(ii) Demonstrate the reasonableness of the relationship between a fee and the actual costs of the investigative activity for which the fee is being prescribed.

(h) Prescribing the manner and method of collection and payment of fees and issuance of licenses.

(i) Prescribing under what conditions a licensee may be deemed subject to revocation or suspension of his license.

(j) Requiring any applicant or licensee to waive any privilege with respect to any testimony at any hearing or meeting of the commission, except any privilege afforded by the Constitution of the United States or this state.

(k) Defining and limiting the area, games and devices permitted, and the method of operation of such games and devices, for the purposes of this chapter.

(*l*) Prescribing under what conditions the nonpayment of a gambling debt by a licensee shall be deemed grounds for revocation or suspension of his license.

(m) Governing the use and approval of gambling devices and equipment.

(n) Prescribing the qualifications of, and the conditions under which, attorneys, accountants and others are permitted to practice before the commission.

(o) Restricting access to confidential information obtained under this chapter and ensuring that the confidentiality of such information is maintained and protected.

(p) Prescribing the manner and procedure by which the executive director on behalf of the commission shall notify a county or a municipality wherein an applicant for a license desires to locate.

(q) Prescribing the manner and procedure for an objection to be filed with the commission and the executive director by a county or municipality wherein an applicant for a license desires to locate.

(3) Notwithstanding any other provision of law, each licensee shall be required to comply with the following regulations:

(a) No wagering shall be allowed on the outcome of any athletic event, nor on any matter to be determined during an athletic event, nor on the outcome of any event, which does not take place on the premises.

(b) No wager may be placed by, or on behalf of, any individual or entity or group, not present on a licensed vessel or cruise vessel.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 17; Laws, 2010, ch. 431, § 1, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment added the last sentence in (1); substituted "determined by the commission under paragraph (g) of this subsection (2)" for "determined by the commission, except that no applicant for an initial license shall be required to pay any part of the fees or costs of the investigation of the applicant with regard to the initial license"; and added (g) and redesignated the remaining subsections accordingly.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 75-76-34. Regulation of schools and training institutions that teach or train gaming employees; allow gaming management courses to be taught at institutions of higher learning and community colleges.

(1) Except as otherwise provided in this section, the Mississippi Gaming Commission is authorized to regulate all schools or training institutions that teach or train gaming employees. No such school shall be located on publicly owned property, other than property under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning or a public community college. Except as authorized under this section, no public school shall teach or train persons to be gaming employees. The gaming educational activities of schools or training institutions regulated by the commission and of state institutions of higher learning and public community colleges shall be deemed

to be legal under the laws of the State of Mississippi. Any person desiring to operate a school or training institution other than a state institution of higher learning or public community college must file a license application with the executive director to be licensed by the commission.

(2) The commission may adopt regulations it deems necessary to regulate schools and training institutions other than state institutions of higher learning and public community colleges. These regulations shall, without limiting the general powers of the commission, include the following:

(a) Prescribing the method and form of application which any applicant for a school or training institution must follow and complete before consideration of his application by the executive director or commission.

(b) Prescribing the information to be furnished by the applicant relating to his employees.

(c) Requiring fingerprinting of the applicant, employees and students of the school or institution or other methods of identification and the forwarding of all fingerprints taken pursuant to regulation of the Federal Bureau of Investigation.

(d) Requiring any applicant to pay all or part of the fees and costs of investigation of the applicant as may be determined by the commission.

(e) Prescribing the manner and method of collection and payment of fees and costs and issuance of licenses to schools or training institutions.

(f) Prescribing under what conditions a licensee authorized by this section may be deemed subject to revocation or suspension of his license.

(g) Defining the curriculum of the school or training institution, the games and devices permitted, the use of tokens only for instruction purposes, and the method of operation of games and devices.

(h) Requiring the applicant to submit its location of the school or training institution, which shall be at least four hundred (400) feet from any church, school, kindergarten or funeral home. However, within an area zoned commercial or business, the minimum distance shall not be less than one hundred (100) feet.

(i) Requiring that all employees and students of the school or training institution be at least twenty-one (21) years of age.

(j) Requiring all employees and students of the school or training institution to wear identification cards issued by the commission while on the premises of the school or training institution.

(k) Requiring the commission to investigate each applicant, employee and student and determine that the individual does not fall within any one (1) of the following categories:

(i) Is under indictment for, or has been convicted in any court of, a felony;

(ii) Is a fugitive from justice;

(iii) Is an unlawful user of any controlled substance, is addicted to any controlled substance or alcoholic beverage, or is an habitual drunkard;

(iv) Is a mental defective, has been committed to a mental institution, or has been voluntarily committed to a mental institution on more than one (1) occasion;

(v) Has been discharged from the Armed Forces under dishonorable conditions; or

(vi) Has been found at any time by the executive director or commission to have falsified any information.

(3) State institutions of higher learning and community colleges may offer credited courses specifically relating to gaming management, including, but not limited to, courses that provide instruction in accounting, hospitality, marketing, auditing, finance, procurement, security and regulatory requirements in fulfillment of a degree in general business management, hotel and motel management, food and beverage management, gaming management, accounting or criminal justice. State institutions of higher learning and community colleges are not subject to regulation by the commission for the purposes of this subsection. The courses authorized by this subsection may be offered only in those counties where gaming is legally being conducted and where the institution is located.

(4) State institutions of higher learning and public community colleges may offer courses related to casino hospitality services, cage and count operations, and slot machine maintenance. Slot machine maintenance training may be performed only on equipment approved by the commission for training purposes only. State institutions of higher learning and public community colleges are not subject to regulation by the commission for the purposes of this subsection. The courses authorized by this subsection may be offered only in those counties where gaming is legally being conducted and where the institution or community college is located.

SOURCES: Laws, 1991, ch. 543, § 1; Laws, 2010, ch. 431, § 8; Laws, 2013, ch. 327, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2010 amendment deleted "and be a resident of the State of Mississippi" from the end of (2)(i).

The 2013 amendment rewrote (1); inserted "other than state institutions of higher learning and public community colleges" in (2); and added (3) and (4).

REGULATION OF LICENSEES

SEC.

§ 75-76-55. Acts prohibited of owners, licensees or employees without first obtaining gaming license.

(1) Except as otherwise provided in Section 75-76-34, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others, without having first procured and thereafter maintaining in effect a state gaming license:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Mississippi any gambling game, including, without limitation, any gaming device, slot machine, race book or sports pool;

(b) To provide or maintain any information service the primary purpose of which is to aid the placing or making of wagers on events of any kind; or

(c) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, including, without limitation, any slot machine, gaming device, race book or sports pool.

(2) Except as otherwise provided in Section 75-76-34, it is unlawful for any person knowingly to permit any gambling game, including, without limitation, any slot machine, gaming device, race book or sports pool to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part, by a person who is not licensed pursuant to this chapter or by his employee.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 28; Laws, 2013, ch. 327, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendments added the exceptions at the beginning of (1) and (2); and made minor stylistic changes throughout.

LICENSING AND FINDINGS OF SUITABILITY

SEC.

§ 75-76-79. Unlawful to operate any form of manufacture, selling or distribution of gaming device without required licenses; exceptions; manufacturer's or distributor's licenses; application of Sections 75-76-199 through 75-76-265; effect of finding of unsuitability; license fees; findings of suitability; inspections of gaming devices and associated equipment; inspection fees.

(1)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device for use or play in Mississippi or for distribution outside of Mississippi without first procuring and maintaining all required federal and state licenses.

(b) A lessor who specifically acquires equipment for a capital lease is not required to be licensed under this section.

(c) The holder of a state gaming license or the holding company of a corporate licensee may, within two (2) years after cessation of business or

upon specific approval by the executive director, dispose of by sale in a manner approved by the executive director, any or all of its gaming devices, including slot machines, without a distributor's license. In cases of bankruptcy of a state gaming licensee or foreclosure of a lien by a bank or other person holding a security interest for which gaming devices are security in whole or in part for the lien, the executive director may authorize the disposition of the gaming devices without requiring a distributor's license.

(d) Any person whom the commission determines is a suitable person to receive a license under the provisions of this section may be issued a manufacturer's or distributor's license. The burden of proving his qualification to receive or hold a license under this section is at all times on the applicant or licensee.

(e) Every person who must be licensed pursuant to this section is subject to the provisions of Sections 75-76-199 through 75-76-265, unless exempted from those provisions by the commission.

(f) The commission may exempt, for any purpose, a manufacturer, seller or distributor from the provisions of Sections 75-76-199 through 75-76-265, if the commission determines that the exemption is consistent with the purposes of this chapter.

(g) As used in this section, "holding company" has the meaning ascribed to it in Section 75-76-199.

(2) If the commission determines that a manufacturer or distributor is unsuitable to receive or hold a license:

(a) No new gaming device or associated equipment manufactured by the manufacturer or distributed by the distributor may be approved;

(b) Any previously approved device or associated equipment manufactured by the manufacturer or distributed by the distributor is subject to revocation of approval if the reasons for the denial of the license also apply to that device or associated equipment;

(c) No new device or associated equipment manufactured by the manufacturer or distributed by the distributor may be sold, transferred or offered for use or play in Mississippi; and

(d) Any association or agreement between the manufacturer or distributor and a licensee must be terminated, unless otherwise provided by the commission. An agreement between such a manufacturer or distributor of gaming devices or associated equipment and a licensee shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the commission that the manufacturer is unsuitable to be associated with a gaming enterprise. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

(3) Failure of a licensee to terminate any association or agreement with a manufacturer or distributor of gaming devices or associated equipment after receiving notice of a determination of unsuitability, the denial of a license or failure to file a timely application for a license, is an unsuitable method of operation.

(4) There is hereby imposed and levied on each applicant for a manufacturer's, seller's or distributor's license under this section an annual license fee in the following amount:

(a) For the issuance or continuation of a manufacturer's license, One Thousand Dollars ($1,000.00).

(b) For the issuance or continuation of a seller's or distributor's license, Five Hundred Dollars ($500.00).

This fee is to be paid by the applicant to the State Tax Commission on or before the filing of the application for a manufacturer's, seller's or distributor's license by the applicant. Upon such payment the Chairman of the State Tax Commission shall certify to the executive director that such fee has been paid by the applicant.

Except for those amounts that a person issued a manufacturer's license under this section may charge for goods supplied or services rendered, the person holding the manufacturer's license may not be directly reimbursed by a holder of a gaming license for the cost of any fee paid by the person for the issuance or continuation of such a license, whether imposed under this section or any other provision of this chapter.

(5) A manufacturer or distributor of associated equipment who sells, transfers or offers the associated equipment for use or play in Mississippi may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

Any person who directly or indirectly involves himself in the sale, transfer or offering for use or play in Mississippi of associated equipment who is not otherwise required to be licensed as a manufacturer or distributor may be required by the executive director to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

If an application for a finding of suitability is not submitted within thirty (30) days after demand by the executive director, he may pursue any remedy or combination of remedies provided in this chapter.

(6) The executive director and his employees may inspect every gaming device which is manufactured, sold or distributed:

(a) For use in this state, before the gaming device is put into play.

(b) In this state for use outside this state, before the gaming device is shipped out of this state.

The executive director may inspect every gaming device which is offered for play within this state by a licensee.

The executive director may inspect all associated equipment which is manufactured, sold or distributed for use in this state before the equipment is installed or used by a gaming licensee.

In addition to all other fees and charges imposed by this chapter, the executive director may determine an inspection fee with regard to each manufacturer, seller or distributor which must not exceed the actual cost of inspection and investigation. Upon such determination, the executive director shall certify to the Chairman of the State Tax Commission the amount of the inspection fee and the name and address of the applicant. Upon such

certification the State Tax Commission shall proceed to assess and collect such inspection fee from the applicant.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 40; Laws, 2010, ch. 431, § 7, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment added the last paragraph in (4).

§ 75-76-81. Chairman of State Tax Commission to collect all taxes, fees, penalties, etc.; due date of gross revenue fees; application of sales tax law.

Except as otherwise provided in this section, the Chairman of the State Tax Commission shall assess and collect all taxes, fees, licenses, interest, penalties, damages and fines imposed by this chapter, and is hereby empowered to promulgate rules and regulations to administer such collections. Any records or other documents submitted by the licensee, or on his behalf, to the Mississippi Gaming Commission or executive director shall be made available to the Chairman of the State Tax Commission or his authorized agent upon written request.

The gross revenue fees levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the fees accrue except as otherwise provided. The licensee shall make a return showing the gross revenue and compute the fee due for the period.

Except for fees imposed under Section 75-76-33(2)(f), all administrative provisions of the sales tax law, and amendments thereto, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon any licensee or taxpayer, shall apply to all persons liable for taxes, fees and all other monies imposed under the provisions of this chapter. However, fines or other assessments levied by the Mississippi Gaming Commission or the executive director will not be considered due and payable until thirty (30) days after final determination of such fines or assessments. The Chairman of the State Tax Commission shall exercise all power and authority and perform all duties with respect to licensees or taxpayers under this chapter as are provided in said sales tax law, except where there is conflict, then the provisions of this chapter shall control.

The Mississippi Gaming Commission shall assess and collect all fees imposed under Section 75-76-33(2)(f) and shall deposit the funds received from the fees into the Mississippi Gaming Commission Fund created in Section 75-76-325.

The determination and/or assessment of any taxes, fees, licenses, interest, penalties, damages and fines under this chapter by the Chairman of the State Tax Commission, the Executive Director of the Mississippi Gaming Commission or the Mississippi Gaming Commission shall be prima facie correct.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 41; Laws, 2010, ch. 431, § 2, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment added the exceptions in the first and third paragraphs; and added the fourth paragraph.

ENFORCEMENT OF GAMING CONTROL ACT

§ 75-76-147. Proceedings or actions to enforce provisions of Gaming Control Act and Section 97-19-55 under certain circumstances; referral of matter to district attorney or Attorney General.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2) by substituting "or a violation of Section 97-19-55" for "or in violation of Section 97-19-55." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

ENFORCEMENT OF GAMING DEBTS NOT EVIDENCED BY CREDIT INSTRUMENT

SEC.

§ 75-76-157. Gaming debts not evidenced by credit instrument not enforceable; resolution of certain claims or disputes between licensee and patron associated with promotional activities.

(1) Except as provided in Sections 75-76-159 through 75-76-165, inclusive, gaming debts not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action.

(2) A claim by a patron of a licensee for payment of a gaming debt not evidenced by a credit instrument, and a dispute between a licensee and a patron associated with a promotional activity as defined in Section 75-76-5(mm), shall be resolved by the executive director in accordance with Sections 75-76-159 through 75-76-165, inclusive. The resolution of such a claim or dispute by the executive director shall include any claims for alleged winnings or losses, or the award or distribution of cash, prizes, benefits, tickets or any other item of value associated with the promotional activity, or the manner in which the specific event at which the award or distribution from the promotional activity is conducted; however, the authority granted under this subsection (2) regarding a promotional activity does not provide the executive director or the commission with any additional authority, not otherwise

granted by law, to regulate the promotional activity with regard to those matters pertaining exclusively to the operational or administrative aspects of the promotional activity that occur in advance of such specific event at which the award or distribution is conducted.

SOURCES: Laws, 1990 Ex Sess, ch. 45, § 79; Laws, 2009, ch. 384, § 1; Laws, 2010, ch. 431, § 9, eff from and after passage (approved Mar. 24, 2010.)

Amendment Notes — The 2010 amendment, in the last sentence in (2), inserted "specific event at which the award or distribution from the," added the language beginning "however, the authority granted under this subsection (2)" through to the end, and made minor stylistic changes.

§ 75-76-171. Resolution of claim by patron; judicial review; taking of additional evidence; standard of review; grounds for reversal of decision of commission.

JUDICIAL DECISIONS

2. Violation of substantial rights.

Trial court's reversal of the Mississippi Gaming Commission's award in favor of a patron and against the casino was proper under Miss. Code Ann. § 75-76-171(3) because the patron's award was determined by the combination resulting from her play, and not the secondary indicators activated by the play. There was no indication from anything on the slot machine before the patron began playing showing that she could win anything more than $ 8,000 with three double diamonds lined up on the pay line. Eash v. Imperial Palace of Miss., LLC, 4 So. 3d 1042 (Miss. 2009).

MISSISSIPPI GAMING COMMISSION FUND

SEC.

§ 75-76-325. Mississippi Gaming Commission Fund created; use of funds.

(1) There is created in the State Treasury a special fund to be designated as the "Mississippi Gaming Commission Fund." The special fund shall consist of monies deposited therein under Section 75-76-81 and monies from any other source designated for deposit into the fund. Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited to the credit of the fund.

(2) Monies in the special fund may be used by the commission, upon appropriation by the Legislature, only for the purposes of carrying out the provisions of this chapter. Unexpended amounts remaining in the special fund at the end of a fiscal year shall be used by the commission in calculating the amounts of fees to be imposed under Section 75-76-33(2)(f) during the next succeeding state fiscal year that will be necessary to provide the commission

with sufficient revenue, when combined with other monies deposited into the special fund, to carry out the provisions of this chapter without any state general funds.

SOURCES: Laws, 2010, ch. 431, § 3, eff from and after passage (approved Mar. 24, 2010.)

Editor's Note — Laws of 2010, ch. 431, § 4, effective March 24, 2010, provides:
"SECTION 4. The imposition and collection of any fees by the Mississippi Gaming Commission under Section 75-76-1 et seq. before the effective date of this act, the deposit of funds received from those fees into any fund in the State Treasury before the effective date of this act, and the expenditure of such funds before the effective date of this act are hereby ratified, approved and confirmed as being the proper method of imposition, collection, deposit and expenditure before the effective date of this act."

CHAPTER 77

Repurchase of Inventories From Retailers Upon Termination of Contract

SEC.

§ 75-77-1. Definitions.

For the purposes of this chapter the following words and phrases have the following meanings unless the context otherwise requires:

(a) "Current model" means a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;

(b) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the contract is cancelled or discontinued, less any applicable trade and cash discounts;

(c) "Retailer" means any person, firm or corporation engaged in the business of selling and retailing farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles, attachments or repair parts and shall not include retailers of petroleum products;

(d) "Inventory" means farm implements, machinery, utility and industrial equipment, consumer products, outdoor power equipment, attachments and repair parts;

(e) "Supplier" means any manufacturer, wholesaler, wholesale distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidations, any receiver or assignee, or any trustee of the original manufacturer, wholesaler or distributor; and

(f) "Superseded parts" means any part that will provide the same function as a currently available part as of the date of cancellation.

SOURCES: Laws, 1977, ch. 419, § 1; Laws, 1994, ch. 399, § 5; Laws, 1997, ch. 318, § 1; Laws, 2013, ch. 457, § 1, eff from and after passage (approved March 25, 2013.)

Amendment Notes — The 2013 amendment inserted "all-terrain vehicles, off-road utility vehicles" in (c).

§ 75-77-9. Certain items need not be repurchased.

The provisions of this chapter shall not require the repurchase from a retailer of:

(a) Any repair part which, because of its condition, is not resalable as a new part;

(b) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(c) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles and attachments which are not current models or which are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased as provided in Section 75-77-5 shall be considered new and unused;

(d) Any repair parts which are not in new, unused, undamaged condition;

(e) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles or attachments which were purchased more than thirty-six (36) months prior to notice of termination of the contract;

(f) Any inventory which was ordered by the retailer on or after the date of termination of the contract.

SOURCES: Laws, 1977, ch. 419, § 5; Laws, 1994, ch. 399, § 7; Laws, 1997, ch. 318, § 7; Laws, 2013, ch. 457, § 2, eff from and after passage (approved March 25, 2013.)

Amendment Notes — The 2013 amendment inserted "all-terrain vehicles, off-road utility vehicles" in (c) and (e).

CHAPTER 93

Fictitious Business Name Registration Act

SEC.

§ 75-93-1. Short title.

This chapter may be cited as the "Fictitious Business Name Registration Act."

SOURCES: Laws, 2010, ch. 401, § 1, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-1 for Code section number 25-93-1, which was the Code section number assigned to this section by Section 1 of Chapter 401, Laws of 2010.

§ 75-93-3. Purpose.

The purpose of this chapter is to establish a centralized, statewide system of voluntary registration of fictitious business names being used in this state in order to provide the public with the legal names of persons or entities doing business under a fictitious name.

SOURCES: Laws, 2010, ch. 401, § 2, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-3 for Code section number 25-93-3, which was the Code section number assigned to this section by Section 2 of Chapter 401, Laws of 2010.

§ 75-93-5. Definitions.

As used in this chapter:

(a) "Business" means any commercial or professional activity.

(b) "Fictitious business name" means any name under which an entity transacts business in this state, other than (i) the entity's legal name, or (ii) a fictitious name adopted by a foreign entity under Title 79, Mississippi Code of 1972, because its legal name is unavailable.

(c) "Entity" means any corporation; limited liability company; partnership; limited partnership; limited liability partnership; sole proprietorship; firm; enterprise; franchise; association; organization; holding company; self-employed individual; joint-stock company; receivership; trust; other legal entity or undertaking organized for economic gain; nonprofit corporation; association or organization receiving public funds; or other such entity.

SOURCES: Laws, 2010, ch. 401, § 3, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-5 for Code section number 25-93-5, which was the Code section number assigned to this section by Section 3 of Chapter 401, Laws of 2010.

§ 75-93-7. Registration.

(1) An entity may apply to register a fictitious business name by filing with the Secretary of State the following information:

(a) The fictitious business name to be registered;

(b) The applicant's legal name and mailing address;

(c) Every street address or physical location where the entity uses or will be using the fictitious business name to transact business;

(d) If the applicant is a domestic corporation or limited liability company, its Mississippi business identification number;

(e) If the applicant is a foreign corporation or limited liability company, the state or nation of its organization and a copy of its certificate of authority to transact business in Mississippi;

(f) A statement that the applicant is familiar with the provisions of this chapter and understands that filing under this section does not create any exclusive rights in or to the fictitious business name; and

(g) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the applicant's electronic mailing address, the address of the entity's official Web site, if applicable, and the general nature of the business conducted by the applicant.

(2) The applicant shall sign and verify the application.

(3) Upon compliance by the applicant with the requirements of this section, the Secretary of State shall return to the applicant a stamped copy of the approved registration application.

(4) The Secretary of State shall not refuse registration of a fictitious business name on the grounds that the name is indistinguishable from a previously registered fictitious business name, registered trademark, or legal name of an entity required by law to register with the Secretary of State.

(5) Only one (1) fictitious business name may be registered per application submitted under the provisions of this section.

SOURCES: Laws, 2010, ch. 401, § 4, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-7 for Code section number 25-93-7, which was the Code section number assigned to this section by Section 4 of Chapter 401, Laws of 2010.

§ 75-93-9. Amendments to registration.

The registrant of a fictitious business name shall, within thirty (30) days of a material change in any of the information listed in Section 75-93-7(1), file with the Secretary of State an amendment of fictitious business name registration. The amendment shall set forth all information that would be required in an original application for registration of a fictitious business name, and the amendment shall be executed in the same manner as an original application.

SOURCES: Laws, 2010, ch. 401, § 5, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-9 for Code section number 25-93-9, which was the Code section number assigned to this section by Section 5 of Chapter 401, Laws of 2010. In addition, an error in a statutory reference in the section was corrected by substituting "Section 75-93-7(1)" for Section 25-93-7(1)."

§ 75-93-11. Term and renewal.

(1) The registration period for a fictitious business name registered under this chapter shall be five (5) years; registration shall expire on December 31 of the year in which the fifth anniversary of registration occurs.

(2) Renewal of fictitious business name registrations:

(a) Renewal of a fictitious business name registration may be made on or between January 1 and December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the registration shall continue for five (5) years as provided in this section.

(b) If the registration is not timely renewed on or before December 31 of the year of expiration, the registration shall expire. The Secretary of State shall remove any expired or canceled registration from its records and may purge such registrations.

SOURCES: Laws, 2010, ch. 401, § 6, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-11 for Code section number 25-93-11, which was the Code section number assigned to this section by Section 6 of Chapter 401, Laws of 2010.

§ 75-93-13. Effect of registration.

Notwithstanding the provisions of any other law, registration of a fictitious business name under this chapter is for public notice only and gives rise to no presumption of the registrant's exclusive rights to own or use the fictitious business name registered, nor does it affect trademark, service mark, trade name, or other name rights previously acquired by others in the same or

similar name. Registration under this chapter does not preserve a fictitious business name against future use or registration by others. The issuance of a registration under this chapter shall not constitute due organization or authority to transact business in this state.

SOURCES: Laws, 2010, ch. 401, § 7, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-13 for Code section number 25-93-13, which was the Code section number assigned to this section by Section 7 of Chapter 401, Laws of 2010.

§ 75-93-15. Withdrawal of registration.

The registrant of a fictitious business name may withdraw its registration by delivering to the Secretary of State a statement containing the following:

(a) The legal name of the entity utilizing the fictitious business name;

(b) The fictitious business name with respect to which the statement of withdrawal relates;

(c) That the entity will no longer transact business in this state under the fictitious business name;

(d) An acknowledgement that the applicant understands the fictitious business name registration will no longer be effective upon the filing of the statement of withdrawal; and

(e) The signature of the withdrawing registrant.

SOURCES: Laws, 2010, ch. 401, § 8, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-15 for Code section number 25-93-15, which was the Code section number assigned to this section by Section 8 of Chapter 401, Laws of 2010.

§ 75-93-17. Cancellation of registration.

The Secretary of State shall cancel a fictitious business name registration if:

(a) The Secretary of State receives a voluntary withdrawal of registration from the registrant or the assignee of record;

(b) The registration is not renewed in accordance with this chapter;

(c) A court of competent jurisdiction orders the cancellation on any grounds; or

(d) The registration was obtained fraudulently by containing false or misleading information.

SOURCES: Laws, 2010, ch. 401, § 9, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-17 for Code section number 25-93-17, which was the Code section number assigned to this section by Section 9 of Chapter 401, Laws of 2010.

§ 75-93-19. Change of ownership.

Any fictitious business name registered under this chapter may be assigned by filing a duly executed written instrument with the Secretary of State.

SOURCES: Laws, 2010, ch. 401, § 10, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-19 for Code section number 25-93-19, which was the Code section number assigned to this section by Section 10 of Chapter 401, Laws of 2010.

§ 75-93-21. Forms and fees.

(1) All filings required under this chapter shall be made on forms prescribed by the Secretary of State.

(2) Subject to the provisions of subsection (3), the Secretary of State shall charge and collect nonrefundable processing fees as follows:

(a) For registration or renewal of a fictitious business name, Twenty-five Dollars ($25.00).

(b) For withdrawal, cancellation, amendment, or assignment of a fictitious business name, Twenty-five Dollars ($25.00).

(c) For furnishing a certified copy of a fictitious business name document, Ten Dollars ($10.00).

(3) Entities required by law to file annual reports with the Secretary of State shall not be charged a separate fee for registration or renewal of a fictitious business name, provided that the application for registration or renewal is filed along with the entity's annual report.

(4) The Secretary of State shall prescribe by rule the means of electronic filing of documents required under this chapter.

SOURCES: Laws, 2010, ch. 401, § 11, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-21 for Code section number 25-93-21, which was the Code section number assigned to this section by Section 11 of Chapter 401, Laws of 2010.

§ 75-93-23. Legal designation of entity.

Notwithstanding any other provision of law to the contrary, a fictitious business name registered as provided in this chapter is not required to contain within that name a designation reflecting the applicant's type of legal entity, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviations or derivatives thereof.

SOURCES: Laws, 2010, ch. 401, § 12, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-23 for Code section number 25-93-23, which was the Code section number assigned to this section by Section 12 of Chapter 401, Laws of 2010.

§ 75-93-25. Limitations on adoption of certain fictitious business names.

(1) The Secretary of State shall refuse registration of a fictitious business name, which, in the Secretary of State's sole discretion, is potentially misleading, or which includes any of the following terms:

(a) "Corporation," "Corp.," "Incorporated," or "Inc.," unless the applicant is a corporation organized or qualified to do business pursuant to the laws of this state;

(b) "Limited Liability Company," "Limited Company" or the abbreviation "L.L.C.," "L.C.," "LLC," or "LC," unless the applicant is a limited liability company organized or registered to do business pursuant to the laws of this state;

(c) "Business Trust" or the abbreviation "B.T." or "BT," unless the applicant is a business trust organized or registered to do business pursuant to the laws of this state;

(d) "Professional Corporation" or the abbreviation "Prof. Corp.," "P.C.," or "PC" or the word "Chartered" or the abbreviation "Chtd.," unless the applicant is a professional corporation organized to do business pursuant to the laws of this state;

(e) "Professional Association," "Professional Organization," or the abbreviation "Prof. Ass'n" or "Prof. Org.," unless the applicant is a professional association organized to do business pursuant to the laws of this state;

(f) "Limited" or the abbreviation "Ltd.," unless the applicant is a corporation, limited liability company, registered limited liability partnership, limited partnership, or professional corporation organized, qualified, or registered to do business pursuant to the laws of this state;

(g) Words not permitted to be used in any business name without governmental consent, unless the applicant provides to the Secretary of State written evidence of such consent.

(2) Notwithstanding the other provisions of this section, the Secretary of State may allow registration of a fictitious business name which contains a prohibited term if, in the Secretary of State's sole discretion, the term is not misleading.

SOURCES: Laws, 2010, ch. 401, § 13, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-25 for Code section number 25-93-25, which was the Code section number assigned to this section by Section 13 of Chapter 401, Laws of 2010.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.101 et seq.

Mississippi Professional Corporation Act, see §§ 79-10-1 et seq.

Mississippi Limited Liability Company Act, see §§ 79-29-101 et seq.

§ 75-93-27. Public examination of records.

The Secretary of State shall keep for public examination a record of all fictitious business names registered or renewed under the provisions of this chapter.

SOURCES: Laws, 2010, ch. 401, § 14, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-27 for Code section number 25-93-27, which was the Code section number assigned to this section by Section 14 of Chapter 401, Laws of 2010.

§ 75-93-29. Powers of Secretary of State.

The Secretary of State is granted the power reasonably necessary to enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter.

SOURCES: Laws, 2010, ch. 401, § 15, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-29 for Code section number 25-93-29, which was the Code section number assigned to this section by Section 15 of Chapter 401, Laws of 2010.

§ 75-93-31. Penalty for fraudulent filings.

Any person who shall knowingly and willfully procure the registration of a fictitious business name or apply for registration of a fictitious business name under the provisions of this chapter by knowingly making any false or

fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00).

SOURCES: Laws, 2010, ch. 401, § 16, eff from and after July 1, 2010.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Code section number assigned to this section was corrected by substituting Code section number 75-93-31 for Code section number 25-93-31, which was the Code section number assigned to this section by Section 16 of Chapter 401, Laws of 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 95

Business of Purchasing Precious Items for Resale

Sec.

§ 75-95-1. Definitions; applicability.

(1) As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Dealer" means any person, corporation or partnership that engages in the business of purchasing precious items for the purpose of reselling such items in any form. The term "dealer" does not include a manufacturer, retail merchant, pawnbroker licensed under the Mississippi Pawnshop Act (Article 7, Chapter 67, Title 75, Mississippi Code of 1972) or person in the wholesale business, nor does it include any person who purchases precious items at a social gathering in a private residence.

(b) "Local law enforcement agency" means the chief of police for businesses located within the jurisdiction of a municipality and the county sheriff for businesses located outside the jurisdiction of a municipality.

(c) "Permanent place of business" means a fixed premises either owned by the dealer or leased by the dealer for at least one (1) year.

(d) "Precious item" means any of the following:

(i) An article made, in whole or in part, of gold, silver or platinum.

(ii) Precious or semiprecious stones or pearls, whether mounted or unmounted.

(e) "Purchase" means the acquisition of a precious item or items for a consideration of cash, goods or another precious item.

(2) This chapter shall not apply to any person who purchases precious items from a retail merchant, pawnbroker licensed under the Mississippi Pawnshop Act, manufacturer or wholesale dealer, nor does it apply to any person who purchases precious items at a social gathering in a private residence.

(3) For purposes of this section, the term "private residence" means a separate dwelling or a separate apartment in a multiple dwelling, which is occupied by members of a single-family unit.

SOURCES: Laws, 2011, ch. 414, § 1, eff from and after July 1, 2011.

Cross References — Mississippi Pawnshop Act, see §§ 75-67-301 et seq.

§ 75-95-3. Privilege license required.

(1) A dealer desiring to engage in the business of purchasing precious items for the purpose of reselling those items must purchase a privilege license under Section 27-17-9 which authorizes him or her to engage in that business. A dealer may not operate in the State of Mississippi unless he or she has a current privilege license to engage in the business of purchasing precious items for the purpose of reselling those items.

(2) A dealer may operate only from the permanent place of business listed on the privilege license. The dealer must forward a copy of each privilege license to the local law enforcement agency within five (5) days of receipt of the license.

SOURCES: Laws, 2011, ch. 414, § 2, eff from and after July 1, 2011.

§ 75-95-5. Information to be maintained by dealer for period of time after purchase of precious item; identification of person from whom dealer purchases precious item; list of items purchased to be delivered to law enforcement agency; contents of list.

(1) Each dealer shall keep the following information for six (6) months from the date of purchase of a precious item:

(a) The name, current address, date of birth and signature of the person from whom the dealer purchased the item.

(b) A description of the person, including height, weight, race, complexion and hair color.

(c) A copy and the serial number of a valid identification card number, as required under subsection (2).

(d) A list describing the items purchased from that person.

Upon the request of a local law enforcement agency, the dealer must make available any of the information required under this subsection.

(2) Before making a purchase, a dealer shall require the person from whom he or she is purchasing the precious item to identify himself or herself with a valid driver's license, nondriver's identification card, armed services identification card or other valid photo identification sufficient to obtain the information required under subsection (1). The photo identification must contain a traceable serial number, which must be recorded by the dealer. The local law enforcement agency shall make available to each dealer a list of the forms of photo identification that are acceptable under this chapter.

(3) Each dealer, at least once each week in which he or she makes a purchase, shall make out and deliver to the local law enforcement agency a true, complete and legible list of all items purchased during the period since the last report. If the local law enforcement agency has issued forms for the making of the reports, the dealer must use those forms to meet the requirements of this subsection. The list of items must include the following:

(a) The brand name and serial number, if any, of the item or items purchased.

(b) An accurate description of each item sufficient to enable the law enforcement agency to identify the item.

(c) The date and time when the item was received.

(d) The amount paid for each item.

(e) All information required under subsection (1) of this section.

SOURCES: Laws, 2011, ch. 414, § 3, eff from and after July 1, 2011.

§ 75-95-7. Custody of precious item; forms of payment to seller; purchase of item from person under 18 years of age.

(1) Any item purchased must be held in the dealer's custody in the same shape and form for which it was receipted for fifteen (15) business days after delivering the list of items required under Section 75-95-5 to the local law enforcement agency.

(2) A dealer may make payment to a seller only by check made payable to a named actual intended seller.

(3) It is presumptive evidence of intent to violate this chapter if the items purchased are not listed or fail to agree with the description contained in the required list.

(4) On notification by a law enforcement agency or district attorney's office that the items purchased are the fruits of a crime, a dealer may not dispose of those items.

(5) A dealer may not purchase items from any person under eighteen (18) years of age unless the person is accompanied by a parent or guardian who submits the identification required under Section 75-95-5.

SOURCES: Laws, 2011, ch. 414, § 4, eff from and after July 1, 2011.

§ 75-95-9. Display of provisions of this chapter on business premises.

Each dealer must display prominently a copy of this chapter in a conspicuous place on the premises of the business.

SOURCES: Laws, 2011, ch. 414, § 5, eff from and after July 1, 2011.

§ 75-95-11. Penalties for violation of chapter.

A violation of this chapter is a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

SOURCES: Laws, 2011, ch. 414, § 6, eff from and after July 1, 2011.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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